

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

TESTIMONY

Taken in U. S. Circuit Court of Appeals.

J. F. HIGGINS, MASTER AND CLAIM-
ANT OF THE STEAMSHIP "HOMER,"
Appellant,

vs.

CHARLES H. NEWMAN,
Appellee,

AND

J. F. HIGGINS, MASTER AND CLAIM-
ANT OF THE STEAMSHIP "HOMER,"
AND J. S. GOLDSMITH AND F. M.
GRAHAM, STIPULATORS, ETC.,
Appellants,

vs.

CHARLES H. NEWMAN,
Appellee.

VOL. 1


(Pages 1 to 256 Inclusive)

Appeal from the District Court of the United States for
the District of Washington, Northern Division.

FILED

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*In the United States Circuit Court of Appeals, for the Ninth
Circuit.*

J. F. HIGGINS, Master of the Steam- ship "Homer," et al.,	Appellants,	} No. 598.
vs.		
CHARLES H. NEWMAN,	Appellee.	

Order Continuing Appeal, to take Further Testimony, etc.

This cause coming on for hearing on the application of appellants for a continuance of the above-entitled cause and for permission to take additional testimony, and the Court being advised grants said application.

It is ordered that said cause be continued to be heard at the September term of said Court, to be held in Seattle, Washington. To which appellee excepts and his exception is allowed. And that appellants have until the 15th day of June, 1900, in which to take additional testimony; and that appellee have fifteen days thereafter in which to take any counter testimony he may desire. To which appellee excepts and his exception is allowed.

That A. C. Bowman, of Seattle, Washington, be appointed as commissioner to take such testimony, and is directed to make prompt return of all testimony taken before him, to this Court, and to close the taking of testimony on behalf of appellants on said 15th day of June.

1900, and on behalf of said appellee on the 1st day of July, 1900. To which appellee excepts and his exception is allowed.

[Endorsed]: Order. Filed May 9, 1900. F. D. Monckton, Clerk.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing to be a full, true, and correct copy of an order filed in the cause entitled *J. F. Higgins et al. vs. Charles H. Newman*, No. 598, as the original thereof remains of record in my office.

Attest my hand and the seal of said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, this twenty-eighth day of June, A. D. 1900.

[Seal]

F. D. MONCKTON,

Clerk, United States Circuit Court of Appeals for the
Ninth Circuit.

[Ten Cent U. S. Int. Rev. Stamp Canceled.]

[Endorsed]: No. 598. United States Circuit Court of Appeals for the Ninth Circuit. *J. F. Higgins et al., Appellants, vs. Charles H. Newman*. Certified copy of Order Continuing Appeal to September, 1900, Term, etc.

In the United States Circuit Court of Appeals, for the Ninth Circuit.

J. F. HIGGINS, Master SS. "Homer,"	}	No. 598.
et al.,		
	Appellants,	
	vs.	
CHARLES H. NEWMAN,	}	
		Appellee.

Testimony.

To the Honorable, the Judges of the above-entitled Court:

Pursuant to the order of reference made herein on the 9th day of May, 1900, now, on this 23d day of May, 1900, the appellants appeared by Messrs. Metcalfe & Jurey, their proctors, and the appellee appeared by William Martin, Esq., one of his proctors, and thereupon the following proceedings were had and testimony offered:

APPELLANTS' TESTIMONY.

MICHAEL KELLY, a witness called on behalf of the appellants, being first duly sworn, testified as follows:

Mr. MARTIN.—Before any testimony is taken in this case, I interpose an objection to appellants taking any testimony, first, for the reason that the Circuit Court of Appeals of the Ninth Circuit had no jurisdiction to make an order rereferring the case for testimony to be taken and submitted to the Circuit Court of Appeals for its de-

cision; second, for the reason that the case is on appeal from the District Court of the United States, from the State of Washington, Northern Division, for a decision from appeal from the District Court judgment; third, on the ground that the Circuit Court of Appeals must base its opinion upon the evidence submitted in the lower court and only upon such evidence as was before the lower court for its decision.

Q. (Mr. METCALFE.) Mr. Kelly, give your full name. A. Michael Kelly.

Q. Where do you live? A. South Park.

Q. Where is South Park, King county?

A. King county, Washington, yes.

Q. Near the limits of the city of Seattle?

A. Yes, near the limits of the city of Seattle.

Q. How old are you, Mr. Kelly?

A. Forty-seven.

Q. How long have you been a resident of King county?

A. About thirty-six years.

Q. What is your business at present?

A. I am acting as deputy sheriff.

Q. What has been your business during the past thirty-six years in King county?

A. Oh, I have been farming and logging, and been more or less connected with the sheriff's office in King county for the last seven or eight years.

Q. At present you are a deputy?

A. At present I am a deputy.

Q. I will ask you if you know the appellee in this case, Charles H. Newman? A. I believe I do.

Q. Is there any question about whether you do or not—did you ever see him?

A. Yes, I saw Charles H. Newman, at least he acknowledged that was his name.

Q. When did you see Mr. Newman and under what circumstances—when did you first see him?

A. It was somewhere about the 22d or 23d of April, I believe; I was sent to West Seattle at that time by Mr. Gardner to look for a man by the name of Billie Gray and I was told that Mr. Newman could give me information necessary, that he had worked with Gray on board of the bark or vessel named the "Blakeley," that Mr. Newman had been hurt on the "Blakeley," and also requested that I should note the condition of Mr. Newman, whether or not he was able to get around and help himself, and what his condition was; but the main feature, as I understood it, was that I was to find Billy Gray. So I went to West Seattle and found Mr. Newman's Newman lived, not far from the Pavilion, the old Paviliou on top of the hill, which is about a half a mile from the waterfront. I went to the house—

Q. This was in King county?

A. King county. There was a lady came to the door, with a baby in her arms, and I asked if this was Newman's place, and she said, yes; I asked if Newman was in, and she said no; she said he was down on the waterfront at his shop; that she had taken him some lunch, and he was down there. She seemed a little amused; she said there had been three men there already within an hour or so looking for Mr. Newman. I asked if she knew a man by the name of Gray, and she said yes; she thought he had just got in on a schooner that was in Seattle.

Q. Did you ask her then as to where Newman was, and say anything to her about his condition?

A. Yes; I told her that I wanted to see Mr. Newman, and she said that she had left him at the shop. I asked her about his condition simply because I wanted a description of him, and I asked her what kind of a looking man he was, and if he was crippled so as to use a cane, and she said no, that he was getting better now, and did not have to use a cane, or words to that effect, and that I would find him in the shop close to the Blakeley Company's warehouse, I think.

Q. Did you ask her at that time how he walked?

A. Yes. I says, "How does he walk, does he use a cane or crutch, or anything of that kind?" That was for the purpose that I might know him, in case I should meet him on the way up, and she said, oh, no, he did not use a cane, he walked just like anybody else. And I went back down—

Mr. MARTIN.—I object to this as hearsay testimony, as it was not in the presence of the appellee and therefore not admissible.

Q. Did she tell you who she was?

Mr. MARTIN.—I object to the question, for the reason that the response must be hearsay, and it is not competent evidence.

Q. Did she tell you who she was?

Mr. MARTIN.—I renew my last objection.

A. Well, only in a manner; she said that she had taken him his dinner.

Q. Did she say there was any relation between them at all? A. Not that I remember.

Q. Whether she was his wife or not?

A. No, sir.

Q. Did you not ask her? A. No, sir.

Q. What did she say then as to the state of his health?

Mr. MARTIN.—I object to what she said, or anybody else said, as hearsay evidence.

A. She said she guessed he was as well as he ever would be.

Mr. MARTIN.—I move to strike the answer, for the reason stated in my objection.

Q. Now, then, continue, Mr. Kelly; what did you then do?

A. I went down to his warehouse, or to his shop, and the door stood open, but there was nobody in the shop. I went to the warehouse near by, and found a man in the office there and asked him if he knew Newman, and he said yes; he says, "He has been around here all morning. Ain't he in his shop?"

Mr. MARTIN.—I object as simply hearsay, and reciting nothing but hearsay evidence and not admissible, they being statements not made in the presence of the appellee and in no way connected with the appellee.

A. (Continuing.) He stepped to the office and sung out, calling Mr. Newman by name, and Newman answered, so I followed the sound and found him then painting or working on a little sloop, a plunger close to the fence outside of the shop. He was sitting on a box, painting, and I asked him if he was Newman, and he said that he was. I asked him if he knew a man by the name of Billy Gray, and he said he did, and I asked him where Gray was. He thought he had gone off on a

schooner; I think he called the name of the schooner "Valdes," or something like that name; and I asked him where I could find out more about him; and he named a party here in Seattle, I think a man that kept a fruit store, and also a man who keeps a grocery on the waterfront, and ship chandlery store, and he said he could tell me all about him, and if I—

Q. Was there any conversation between you and him as to whether he was hurt on the "Blakeley"?

A. Yes. I says, "You got hurt on the 'Blakeley,' did you?" And he said, yes, he had. I asked him how he was getting along, and he says, "I am about as well as I ever will be, I guess." And I says, "How did the company treat you?" And he says, "Oh, they have not done anything for me."

Q. Now, then, while you were there, what did Newman do; was there any action on his part, at all; did he sit still, or walk around, or what?

A. He painted a small space in front and then he moved along; he just hunched long with his box. He was sitting on a box like that, and painted in another space.

Q. Picked up the box and moved it from place to place?

A. Yes; like this (showing).

Q. Did you observe Mr. Newman, as to his appearance?

A. Yes, sir.

Q. As to his health?

A. Yes; he was a pretty healthy looking man; looked like he was all right.

Q. (Mr. MARTIN.) Are you a doctor?

A. No, sir.

Q. Have you ever had any experience in examining people to see whether they were healthy?

A. Yes; I have been with doctors a good deal; been around the poor farm with Dr. Whiting, and I have always done my own doctoring; I have raised a big family of eight children, and I have not called a doctor in twenty-eight years.

Q. Do you consider yourself a doctor?

A. No doctor.

Q. Do you consider yourself an expert?

A. I have got common sense, and I can tell whether you are sick or healthy—I think you are all right, and feeling pretty good.

Q. You consider yourself able to diagnose a case and determine whether a man is sick, or what is ailing him?

A. Oh, to a certain extent—not an expert.

Q. Did you ever attend a medical school?

A. No, sir.

Q. At all? A. No, sir.

Q. Ever study physiology to any extent?

A. No—I could tell whether a man's head was cut off, or whether he has got a broken leg.

Q. That is about all you can tell?

A. I do not pretend to be a doctor.

Mr. MARTIN.—I object to the witness testifying as to the man's health, for the reason that he is not competent to testify on that point.

Q. (Mr. METCALFE.) State, Mr. Kelly, from what you observed of Mr. Newman while he was working and during the conversation, his actions, and what his appearance was as to his health and strength.

Mr. MARTIN.--I renew my last objection.

A. He seemed like a good healthy man; his color and appearance was all right.

Q. When he would pick up his box and move from place to place along the sloop, or that vessel there that he was painting, did he complain of any pain?

A. No, he made no complaints.

Q. You say he told you at that time that he was the Newman that was hurt on the "Blakeley"?

A. Yes, sir.

Q. At the time that you observed Mr. Newman, and at the time that you were talking with him, did he complain of suffering from any pain? A. No.

Q. Did you subsequently to the 23d of April see Mr. Newman? A. Yes, sir.

Q. Did he have any appearance at that time to you of being a cripple? A. Well, no.

Mr. MARTIN.—I renew my last objection, and move to strike the answer for the same reason.

Q. When and where, and under what circumstances?

A. Since that I went over in company with Mr. Gardner and his typewriter, the young lady that works in his office. We went to his house and rapped at the door and the same lady with the baby came to the door that answered me when I first went there; and they asked if Mr. Newman was in, and she said yes; and asked if we could see him, and she said "walk in"; and we went in the room and this time he was on a lounge, and it was the same man that I had seen at the boat—that I am positive of.

Q. You identified Mr. Newman at his house as being the same man that was painting that sloop?

A. Yes, sir.

Cross-Examination.

Q. (Mr. MARTIN.) You say you went up to Newman's house the first time you went over?

A. Yes, sir.

Q. What for?

A. To find the address of Billy Gray.

Q. What did you want with Billy Gray?

A. I did not know what Mr. Gardner's motives was or what he wanted Billy Gray for.

Q. You did not know what you wanted Billy Gray for? A. No.

Q. What were you going to tell Billy Gray when you saw him—just take a look at him?

A. I was going to get him to come to Mr. Gardner—tell him that Mr. Gardner wanted to see him. Mr. Gardner did not tell me for what purpose he wanted him, but that was my instructions.

Q. You did not know what you wanted him for at all?

A. No, sir.

Q. But you went up there and knocked, and of course you did not know anything at all about Newman?

A. No, sir, I did not; I knew nothing about Newman.

Q. You went over there, and you were paid for going over there to procure evidence, and you were to furnish evidence about Newman? A. No, sir.

Q. That is what you went for? A. No, sir.

Q. You were to be paid money for going over there to get evidence?

A. I did not know that it was in that way at all.

Q. I ask you, were you not paid for going over there to get evidence?

A. I was paid to go over there to see Billy Gray; that was my understanding of the matter.

Q. Did you find Billy Gray? A. No.

Q. You furnished an affidavit to the appellants in this case, did you not? A. That came on afterward.

Q. You were paid for furnishing that affidavit, were you not?

A. I was working by the day for Gardner.

Q. Who is Gardner?

A. He is pretty well known here.

Q. Who is Mr. Gardner? A. A detective.

Q. You stated in your examination that you were deputy sheriff? A. I was not at that time.

Q. But you were trying to lead the Court to believe that you were and had held the position of deputy sheriff, did you not?

A. I have held it, and do hold it now.

Q. Were you acting as deputy sheriff at that time?

A. No, I was not.

Q. You were at that time acting as a detective under this man Gardner, were you not, and being paid?

A. I suppose that is what you call it.

Q. And were sent over there for the purpose of getting evidence; to be in a position at least so that you could make an affidavit against Newman?

A. I did not know it that way at all.

Q. You did not know it? A. No, sir.

Q. Then, why did you inquire about Newman's health?

A. Merely to find out whether—I did not want to pass him on the way, I did not want to run up that hill again.

Q. Why did you inquire about his health?

A. I do not know as I did; I just asked about his condition.

Q. You stated you did inquire about his health.

A. I asked about his condition.

Q. You asked Newman whether or not he was injured on the Blakeley? A. Yes, sir.

Q. Why did you ask her that, then, if your sole purpose was to try to find out where Mr. Gray was?

A. I wanted to find out if he was the man that Gray knew.

Q. Then, on the evidence that you had been to the house, you went and made an affidavit wherein you swore that Mrs. Newman told you that Mr. Newman was at work in his shop, did you not?

A. Why, she told me that she had taken his dinner to him; that is what she told me.

Q. You say that she told you that he was at work in his shop, do you?

A. At work, no; she said he was in his shop, and she had just come back after taking him his lunch, that is what she said.

Q. You swore that she told you that he was at work in his shop?

A. Well, it amounts to about the same thing, as I look at it; of course, she said that he was at his shop. If he had not been at work she would not have taken his dinner down there.

Q. You admit that she did not tell you that he was engaged at work in his shop?

A. I do not think that she said "work."

Q. You went to work and made an affidavit on the pre-

tense that you were over there—for the purpose of giving it some semblance of truth, that she told you that he was at work in his shop?

A. That would not be the intent of it. That was not my intent. You can put that construction on it if you want to.

Q. Did you swear to the following in that affidavit: "That on the 23rd of April, 1900, he called at the home, meaning the home of Charles H. Newman, libelant in the above entitled cause, and rapped at the door, which was answered by libelant's wife, who informed affiant that her husband was working in his shop close to the Blakeley Company warehouse?"

A. Yes, sir.

Q. You swore to that, did you not?

A. Yes, sir.

Q. And when you swore to that you knew that that was not so?

A. No, sir, I did not. The shop had all the appearance of a man being at work.

Q. You knew that she did not tell you that he was working in his shop, did you not?

A. No, sir; she told me just that exactly.

Q. A moment ago you said that she did not.

A. No, sir, I say that is it, just the same thing. He had all the appearance of working, and the shop had all the appearances of a working shop.

Q. You say you never saw him that time when you went to the house first?

A. I did not say anything of the kind.

Q. You stated you never had seen him before you went to the house at that time?

A. Before I went to the house, no, sir.

Q. You say that this was what was told you at the time there at the house? A. That is right.

Q. Now, you are trying to bolster it up by saying that he had the appearance of a working man when you never saw him at all, did you? A. Certainly I saw him.

Q. Not before that time.

Mr. METCALFE.—Take your time and answer the question.

Q. Then, you say you went down to the shop?

A. Yes, sir.

Q. And you saw what you say was Mr. Newman?

A. Yes, sir.

Q. And you say you saw him painting?

A. Yes, sir.

Q. What was he painting with?

A. With a brush.

Q. What kind of a brush?

A. It was just a common small paint brush.

Q. What kind of a looking brush?

A. Oh, well, it was not a very large brush; it was a small, round brush.

Q. What color was he painting?

A. Sort of a dark color.

Q. He was painting a dark color, was he?

A. Yes, sir.

Q. What part of the boat was he painting?

A. The bottom.

Q. Painting on the bottom of the boat?

A. Yes.

Q. And he was painting a dark color?

A. Yes, sir.

Q. Had a very small brush? A. Yes, sir.

Q. What is that? A. Yes, sir.

Q. How large a boat was it?

A. Well, I guess you would call it a sloop or a plunger; I don't know.

Q. This was a very small brush he was using?

A. Yes, sir.

Q. Now, is it probable that he would be using a small brush on the bottom of a large boat?

A. Oh, he could use one on the largest size, as far as that is concerned.

Q. As a matter of fact you never saw him painting there at all? A. How is that?

Q. I ask you this question: If, as a matter of fact, you ever saw him painting that boat at all?

A. You are a liar, sir; I did see him painting a boat there.

Q. What color was he painting that boat?

A. Sort of a dark color.

Q. Sort of a dark color? A. Yes, sir.

Q. What was the dark color?

A. Oh, well, I don't know anything about that; the boat is there to show for itself; the color is there.

Q. You did not observe the boat at all?

A. Oh, yes, certainly.

Q. Then, you cannot tell now?

A. I was not very particular.

Q. You cannot tell what the color of the boat was?

A. Mr. Newman was the man I was after, I wanted to find out about—

Q. He was the man you were after?

A. No, sir.

Q. You knew of no purpose for what you wanted Gray at all? A. No, I did not.

Q. Did you inquire as to Mr. Newman's health before you had seen him; did you inquire how he walked—inquired whether he used a cane, you inquired how he was getting along; you inquired whether he was the man injured on the "Blakeley," and you inquired from her what the company had done toward helping him?

A. I inquired from him.

Q. And yet you say you did not care to see Mr. Newman at all, it was Gray that you were after? Now, Mr. Kelly, what were you paid for it? A. Just wages.

Q. I ask you—you say you were paid for it, for getting that affidavit?

Mr. METCALFE.—Just state what your wages are.

A. Three dollars a day.

Q. I asked you what you were paid for getting that affidavit?

A. Three dollars a day—I was working by the day, sir.

Q. I will ask you if you did not get more than three dollars for procuring that affidavit?

A. No, sir; I was working by the day, at three dollars a day.

Q. For Gardner?

A. For Gardner.

Q. That is the same Gardner, is it not, that served a term in the penitentiary?

A. I suppose so; I think he did, yes.

Q. You think that he did—you know he served a term in the penitentiary several years?

A. No, I do not know it really.

Q. You do know that he is the same man?

A. Yes, he was the same man that was implicated in a smuggling deal.

Q. The same man that served a term in the penitentiary?

A. I do not know as to that really.

Q. That is the man that you are working for?

A. He will bear me out regarding Gray; he sent me over there; of course, casually, to observe how Newman was, but I came back here and still kept up the search for Gray; did not know anything about this man Newman at all.

Q. You say that you still kept up the search for Gray?

A. Yes, sir.

Q. What did you do?

A. I went to the fruit dealer down here and asked, him, and "Yes, sir," he said, "he knew Newman," and had seen Newman after paint and oil the day before.

Q. You were looking for Gray?

A. Gray. I asked him if he knew Newman and Billy Gray.

Q. The fact is that you knew you were not sent there for the purpose of hunting Billy Gray, but used it as a cloak to make the pretense that you had discovered something?

A. It may be; but really I did not know it at the time, I will tell you that much.

Q. You know that is the truth, do you not?

A. Yes, sir, I think so now. But when I came back I went down here to the ship to see if I could find Gray and I was still looking for Gray and made my report that I could not find Gray.

Q. Was he painting the boat red?

A. No, it was dark.

Q. Was he painting the boat green?

A. No, it was a dark color.

Q. You are positive it was not green?

A. No, it was dark.

Q. You are positive that the boat was not painted of a greenish color?

A. Yes, sir, it was not that day.

Q. You are as positive of that as anything else, and you also are equally as positive that he was using a small brush there?

A. Oh, well, it was not like that pencil; it was not a large brush. It was not a flat brush, it was a round brush but not a very large brush.

Q. I will ask you, Mr. Kelly, what you received as compensation for what you have done in procuring this affidavit?

A. I told you that I have told you straight, Mr. Martin.

Q. How many days did you put in?

A. Just one day.

Q. You say you went over to Newman's house again, did you?

A. Yes, sir. I wanted to find out whether I saw Newman at the boat and whether he was the man or not. I went up there and I am positive that he was the same man that I saw at the boat.

Q. You say Gardner went with you?

A. The last time, yes.

Q. And you say his stenographer went with you?

A. Yes, sir.

Q. What was your purpose in going over there, then?

A. Well, I went to identify Newman, that was about all.

Q. You went into the house, did you?

A. Yes, sir.

Q. And Mr. Gardner? A. Yes, sir.

Q. And his stenographer? A. Yes, sir.

Q. Well, what took place there?

A. Well, Mr. Gardner opened the conversation by saying to Mr. Newman—I don't know, he just told Newman that there was some reports out and seemed to be this and that there was a misunderstanding about the proposition and he wanted to right it, and Mr. Newman he was lying on his lounge and he said that he would make no statements unless his attorney was around and to "go and get my attorney and then anything you want to know I will tell you in his presence." And so of course, that was about all that occurred.

Q. Now, do you know the man that has charge of the grading of the electric line that they are building in there to West Seattle, Mr. Murphy? A. No, sir.

Q. You don't know him at all? A. No, sir.

Q. Have you done anything more in connection with this case than you have stated?

A. That is all.

Q. You went around there and inquired of everybody, did you? A. No, sir.

Q. Did not you speak with any other people concerning Mr. Newman?

A. Only to find out where his house was.

Redirect Examination.

Q. (Mr. METCALFE.)—Did you know when you went to West Seattle, at Mr. Gardner's instance, whether or not the evidence that you were to obtain at that time was for Mr. Newman's benefit or for the benefit of the opposite parties?

A. No, sir, I really did not know anything about Mr. Newman and my object was not in regard to Mr. Newman at all.

Q. You did not know whether, as a matter of fact, you would go to see him for the benefit of the "Homer" or for Newman, did you?

A. No, sir, if I had I would have gone at it entirely different.

(Testimony of witness closed.)

SAMUEL F. COOMBS, a witness called on behalf of the appellants, being first duly sworn, testified as follows:

Q. (Mr. METCALFE.) Where do you live, Judge?

A. At West Seattle.

Q. How old a man are you?

A. I am sixty-nine.

Q. How long have you lived in King County?

A. Over forty years.

Q. Have you ever held any official position?

A. I have been committing magistrate and police judge and also county auditor.

Q. Do you hold any official position now?

A. Justice of the Peace in West Seattle.

Q. How long have you been a justice of the peace in West Seattle?

A. Since last year. Two years ago I was elected.

Q. Do you know the appellee Charles H. Newman in the case of Newman against the steamship "Homer"?

A. Yes, sir.

Q. How long have you known Mr. Newman?

A. Well, a couple of years, or so.

Q. Where does he live?

A. He lives up on the hill in West Seattle.

Q. How far was that from the landing?

A. Oh, somewheres—pretty near half a mile, I guess.

Q. What sort of a hill do you have to go to get to his house?

A. About 13 or 14—about a grade of 13 or 14, I don't know what they mean by that. I suppose 13 or 14 inches to 10 feet—I know an electric is 8 to 6 or 13, that is all I know about it.

Q. This hill itself to Newman's house is about half a mile long?

A. Very near that, I should judge.

Q. Well, is it a hill there to climb which makes you puff and blow?

A. Well, it is a continual grade, about that grade to the top.

Q. Does it wind you a bit to go up it?

A. Of course when I was hurt in the gas company I had to be hauled up quite a while.

Q. You are aware of the fact that Mr. Newman claims to have been injured on the brigantine "Blakeley" on account of a collision between the "Homer" and the "Blakeley"?

A. I heard so.

Q. Do you recollect, judge, about the time, and were you living in West Seattle at the time that Mr. Newman claims to have been injured?

A. Yes, sir, somewheres in April I think it was.

Q. April, 1899?

A. I think so. It was soon after he came back from the Yukon; in fact he brought in a letter for me from my son, so I knew of him.

Q. When was the first time, judge, that you saw, if at all, Mr. Newman out of his house after he was injured, or claimed to have been injured?

A. It was some time last fall that I saw Mr. Newman first.

Q. Where was he at that time?

A. About half way down the hill. I met him. He was walking down and I had a talk with him. I says, "Getting out, ain't you, I am glad to see you out." He says, "I have just been out in the yard." I think that was about six months after he was injured that I saw him half way down the hill looking over the bank.

Q. Was anybody with him, at that time, judge?

A. I do not remember whether his wife was with him at that time or not. I hardly think that she was. I talked with him there and was pleased to see him and the conversation that we started was a very friendly conversation, and I told him that I had heard that the "Blakeley" was paid right off quick when she got injured and "why did not you get after them"? Well, he did not give me any answer and I asked him that and then said they had paid damages to the "Blakeley" and I thought they ought to pay damages to you, and that is

about all that I said to him. But I was disappointed to see him looking so fresh in the face, he was looking as healthy as ever I saw him, but I think he was wearing a cane, the first time.

Q. When, Judge, did you see him after that?

A. It must have been a month or two.

Q. Where was it that you saw him then?

A. He was walking up—down, I met him at that time and had a talk with him.

Q. This was about a month after?

A. This was about half way up the hill.

Q. About a month afterward?

A. About a month afterward, some time late last fall that I saw him then.

Q. How did he appear then as to—

A. Well, I do not remember, I hardly think that he had a cane at that time; he might have had it but I do not think so. He was walking moderately, not so fast as I walk generally, but a good deal faster than I did walk after I got hurt.

Q. Did you see Mr. Newman at any time subsequent to that?

A. A very short time after that I saw him going up or down.

Q. Was there anyone with him?

A. Now, I am not certain, I only saw him once after that. I have not seen him since; that was about a month apart.

Q. Did you ever see him going up and down this hill that you speak of without any cane or crutch?

A. Well, I think one time that he did not see me that

I saw him, he was going either ahead of me or behind me, I am not certain which.

Q. How did he appear to walk at that time, Judge, naturally?

A. He did not walk rapidly or anything of that kind.

Q. Was the gait a natural one?

A. Well, I was not thinking about it just about that time just how it was.

Q. Well, Judge, you seem reluctant to testify; why is that?

A. Why, they are neighbors of mine over there.

Mr. MARTIN.—I object to that. It is only an attempt between the counsel and the witness to try to give some weight to his testimony.

Q. Go ahead and testify, Judge.

A. Well, I will say that I was brought into this very peculiarly; I was drawn into it through this same man Gardner.

Q. Well, what about it. I see you seem reluctant to testify, why is that?

A. Well, because they are neighbors of mine, and I was under a misapprehension when I started in. I was called in to Mr. Gardner's office and I did not know what for and he says—Mr. Gardner settled a case for me when I got damages for falling into a hole that the Gas Company had left open with steam coming out from the hole, and I fell in and like to broke my back. I thought I was injured for life, but, as it happened, I—and I commenced suit for \$5000 through Fred Rice Rowell.

Mr. MARTIN.—I object to this testimony and move to strike it out.

Q. Go on and testify.

A. And he settled it for me. I settled for \$300 without going to a lawsuit about it. He called me in for that purpose and he says—and I had every reason to believe that he was friendly to Mr. Newman, and when he asked me to see if I could not fix some plan to get a compromise I says, “Has he got a judgment against him?” And he says, ‘I don’t know.’ And I could not find out whether he wanted me—

Q. Did you know when you saw Newman whether he had a judgment or not?

A. I did not know it and never heard of it. In fact I asked his wife afterwards—or I would not have went there if I had known that he had a judgment.

Q. Now, Judge Coombs, I call your attention to an affidavit made by Charles H. Newman, used as an answering affidavit before the Circuit Court of Appeals at San Francisco on the 9th day of May. I will read to you that portion of Mr. Newman’s affidavit which refers to this—This is a copy that I hold in my hand and is the copy handed to me by proctor for the libellant.

Mr. MARTIN.—I object to cumbering the record with such stuff, for the reason that it is not the affidavit of the witness on the stand and is incompetent to impeach the affidavit.

Q. The following words, beginning on page 2, as a part of the affidavit as sworn to by Mr. Newman on the 5th day of May, 1900. “Affiant further states that the statements contained in the affidavit of said Samuel F. Coombs that affiant walked up the hill at West Seattle from the ferry landing without the aid or assistance of anyone, or the aid or assistance of crutches or even a

cane, and moved along and climbed the hill with as much ease apparently as the said Samuel F. Coombs, who states he is a strong and healthy man, is false and untrue.

“Affiant further states that the said Samuel F. Coombs has called upon affiant and has stated to affiant that he was sent to affiant as his friend from General Metcalfe, attorney for the company, and would advise affiant to settle his claim against the company, that the company would meet him half way and that he could settle up his claim and judgment against the steamship Homer, and to do so without the knowledge of affiant’s attorneys. Affiant informed said Samuel F. Coombs that he was not familiar with such matters or the conduct of cases, and would have nothing to do with the case but relied solely upon his attorneys in all such matters, and that he would not do anything in the matter without having sent for his attorney and consulted with him, to which the said Samuel F. Coombs stated that he was foolish, and to let his attorneys go to ——, and that they would rob him of whatever amount he got from the company, and that he would be better off to accept half of the amount and give a release and satisfaction to the company; that unless he would accept that amount and settle with the company and meet the company half way that the company—meaning the Steamship Homer and the appellants in the above entitled cause—would fight appellee’s claim for ten years, and would in all probability be able to keep affiant from recovering anything from the injuries which he sustained.

“The said Samuel F. Coombs also urged upon affiant

the need of other medical assistance and the money with which to enable him to recover from the injuries which he had sustained, and that he would never be able to recover from his injuries unless he obtained better treatment, which could be done providing he settled with the company, who would pay him the money over at once. That the said Samuel F. Coombs has gone to several parties who are friends of affiant and urged them to go and see affiant and try to persuade affiant to make a settlement with said company through said Samuel F. Coombs, going in the role of a friend of affiant, and being the same person making the affidavit on behalf of appellants in the above entitled action.”

Judge, is the whole of that or any part of it true? Did you see Newman at any time and have that conversation?

A. I gave my affidavit that I have not seen him for the last five or six months, I have not seen him—

Q. Did such a conversation as that related in the affidavit of Mr. Newman occur between you and him?

A. Not the least bit.

Q. Now then, here is an affidavit of Mary Newman, the wife of appellee Charles H. Newman, and in it the following occurs: “Affiant further states that she has also read the affidavit of Samuel F. Coombs in the above entitled cause; that she is acquainted with said Samuel F. Coombs and that he has called at affiant’s house and stated that he was authorized by the company owning the steamship Homer to settle appellee’s claim for damages against said steamship Homer; that as he was a friend of affiant’s and her husband he was desirous of seeing them get something out of the case, and that the

company had informed him that they would meet appellee half way, and that the money would come in quite handy to appellee; that appellee had better settle said claim for half the amount awarded, and that unless he would settle said claim that the company had informed him that they would fight said claim for ten years. That said Samuel F. Coombs was then informed that appellee's attorneys had charge of said case, and that they could not settle the same without consulting his attorneys. Whereupon said Samuel F. Coombs stated that appellee could settle said cause without his attorneys, and that he would settle the matter up for them, and to let his attorneys go to ———, and to settle said cause himself and release said company. Whereupon he was informed by affiant that such course would not be an honest course to take or the right way to act, and as they were not familiar with matters of law they would have nothing to do with him towards having a settlement of said claim, but that he could call on their attorneys, if he saw fit, and make any proposition he desired to them." Now, did you see Mrs. Newman at any time within the past six weeks?

A. The only time I saw her and had a conversation with her was the time I was sent over and did not know that they had any judgment against them. I was asked if I was friendly to them and I told them yes, told Gardner and told Gardner that I would inquire. I asked them, I says, "Have you got a judgment—Have they got a judgment against the company"? I did not know who the company was. He says, "I don't know." And I did not know then when I left Gardner's office whether he

was called in for Newman or for the company. I had called there and she was at the front door, I don't think that I knocked. I asked if Newman was home—I was very friendly with the family, and I asked if Newman was in, and I am not certain whether she said he was in town, but he was not in. I think she said that he was not in, and I think that she snapped me up very quick. She snapped me up very quick. Then I said, "Well, I just called up here to tell you that I got hurt once and I settled it, I was getting a little better and I settled it rather than to continue and I took \$300 and settled it. And the same man that asked me to go over to see you. And I says, "Have you got a judgment"? And she says "I don't know anything at all about it", and she turned around, and that is all the conversation that I had with her, that I had settled and got a little out of it. Then, at that time I felt very friendly to them and do at the present time.

Q. Is the conversation as detailed in that affidavit just read to you by Mary Newman, true or not?

A. I did not know who the attorneys was for the other side.

Q. But is that part of it that she relates there, or is the conversation that you have just related true?

A. It is true.

Q. That is what, do I understand you to mean?

A. I mean this: that I just advised her the same as I would my own people.

Q. Was this part of her affidavit true or was this conversation that you have related true?

A. Yes, sir, this is true, every word that I have related. That long conversation I did not have with her

because I was not there—I only had four or five words with her.

Mr. MARTIN.—I move to strike all of this out.

Q. Now then, Judge, have you seen Newman since?

A. I have not seen him since my first statement.

Q. Now, I will call your attention to an affidavit made by one C. N. Cooper, sworn to on the 5th day of May, the original of which affidavit is on file in the records and files of the Circuit Court of Appeals: "This affiant further states that he has heard read the affidavit of Samuel F. Coombs; that in many respects said affidavit is untrue; affiant further states that said Coombs called upon him and requested and endeavored to have him assist said Coombs to procure a settlement with this libellant Charles H. Newman for the company, and stated that he could settle the case for the company with said Newman whereupon he was informed by affiant that affiant understood Newman's case was in the hands of his attorneys, etc." State whether you know C. N. Cooper?

A. I know him.

Q. Did such a conversation occur between you and Cooper?

A. Not one word with him personally, not one word.

Cross-Examination.

Q. (Mr. MARTIN.) You know Mr. Westerman, don't you?

A. Yes, sir.

Q. You had a similar conversation with him, didn't you, that you had with Cooper, about trying to settle the case?

A. I asked him what he thought about it; he was a great friend—he and I were great friends with Newman.

Q. You asked him to talk to him in a similar way about settling the case that you had with Cooper? And asked him if he could not see if he could not do something toward settling it?

A. Not in that way.

Q. Did not he tell you he had enough to do to attend to his own business and he thought you would have enough to do to attend to yours?

A. No, he did not say that to me, he and I were very friendly. At that time I had found out that there was a judgment, that Newman had got a judgment and then I told him that I felt awfully bad about that, that I had run into this anyway—I felt bad that I had given my affidavit because—but after I heard the captain of the steamboat say that he had seen him pass there—I had not seen him—

Q. You say that these portions that Brother Metcalfe read to you of Mr. Newman's affidavit is untrue?

A. I did not see Mr. Newman at all.

Q. You say you had not seen him for four or five months?

A. I had not seen him since the last time I saw him going up or down the hill there, the first time he just came out.

Q. You have not seen him for the last five or six months?

A. No, sir, I have not seen him for the last three months.

Q. Don't you know that you have seen him since the last five months or six months and had these conversations with him?

A. No, I never had—I had the first conversation, as I tell you in my opening affidavit, that is what I was talking to him about.

Q. Since you had the conversation with him?

A. I have not seen him and have not had any talk with him.

Q. You mean to swear you have not seen him for the last five or six months?

A. I have not seen him since some time last fall.

Q. Have not seen him since?

A. No, sir.

Q. What time was it last fall, in November or October?

A. The first time that he was out I had a talk about him about my boy. I felt awfully pleased to see him walking up and down there.

Q. What month was that?

A. September or October, somewheres last fall. And then two or three months afterwards—one or two months.

Q. One or two months after that?

A. One or two months.

Q. You never have seen him since?

A. I never have seen him since.

Q. You are positive of that?

A. I am positive of that.

Q. You are positive that you did not have that conversation with him?

A. I did not have that conversation because I did not see him.

Q. Within the last five or six months?

A. No, sir, I did not see him.

Q. Now, you knew Mr. Newman was in a critical condition, did you not?

A. I did think so when he first got hurt, and I am not certain now because I have not seen him enough. I was hasty in making the affidavit, I will admit that.

Q. You know that Newman will never be able to perform any manual labor whatsoever?

A. I do not know, you know I have not seen him enough, but I was happily disappointed when I saw him the first time going out and he said he had been out in the yard two or three times and I met him about half way down the hill looking around, and I says, "You are looking first rate." And he says, "I am getting along, yes." And I made that remark, I says, "You ought to make them pay you something as well as for the old hulk that they knocked to pieces."

Q. Now, you have been going around trying to see what you could get this case for, by trying to get a settlement, have you not, Mr. Coombs?

A. Not after that, not after she rebuked me, I have not done that. I then wanted to find out—

Q. I know, but that was your third attempt when she rebuked you?

A. That was—

Q. After you had been running around to see if you could not get charge of the case to settle it up?

A. No, there was not the least bit of that in it at all.

Q. Told them that you were acting for this company and trying to get it settled up?

A. The company never said anything to me about it at all. Mr. Metcalfe, after I had found out that there

was a judgment—I did not know how much it was—Mr. Metcalfe, he says, “The company is fair.” And I says, “By George, you ought to give him something. I believe the company ought to pay that man something because I have my case right in point, if I had fought them I never would have got a cent after I got well.” And he says, “We are reasonable,” Mr. Metcalfe told me, and he says—and he went on to tell about what it cost, some \$600 or \$700 to have this printed matter fixed up to get the appeal. He says, “We are fair, and the company would pay a reasonable sum.” That is what Metcalfe told me after I found that—

Q. You went around when you found that you could not do anything or make anything out of it in the way of procuring a settlement, you turned around and tried to do as much harm as you could?

A. No, sir. I have not been trying to do anything.

Q. You tried to make an affidavit to do as much hurt as you could for the company? A. No, sir.

Q. You mean to say that you did not make this affidavit voluntarily?

A. No. Well, I made that affidavit not really voluntarily but after I read the other affidavit of Captain Waite—

Q. Then, you based your affidavit on what you saw in Captain Waite’s affidavit?

A. No, I did not do that. I thought for myself, “Well, by George, they are persecuting that man wrongfully there or somebody else, or else he has been doing—at least he has not been doing the right thing if he has been seen out on the street.”

Q. You know, Mr. Coombs, that Mr. Newman lay there on his face in bed for months and months after he was injured and had to be turned and was in a perfectly helpless condition, was he not?

A. I do not know it, but I heard so. I heard that he was badly hurt and he and I used to be great friends; I was going up and down by his place there and I talked the matter over with Westerman.

Q. You know that man has been in a crippled condition and is in a crippled condition for life?

A. I have not seen him lately, you know, the last time I saw him was last fall three different times. The first time was when he first came out.

Q. You mean to swear that you saw him without a cane?

A. One time without a cane; I think that was the last time that I saw him. That is one of the three times that I have seen him.

Q. You say when you saw him that he was standing looking over the railing?

A. That was the first time that he came out, he was walking down, about half way down, the hill from his house to the ferry, and I asked him if he was going down, and he thought not, that he would look across—he was standing looking over where the slide came down, half way down, and I talked to him quite a little while; I had to catch the ferry and I went on. I think I met him once in town, I think I did. I did not testify to that but I do remember that I met him coming down to the ferry once.

Q. When was that?

A. Some time last winter, I do not know when it was, but it was a good many months ago, two or three months ago.

Q. What?

A. I say it must have been two or three months ago.

Q. I thought that you swore that you had not seen him since five or six months ago?

A. I said six months after he was hurt before the first time I saw him; then the last time that I saw him—

Q. But to Mr. Metcalfe you answered as to whether these statements of Newman's were true, you said that you gave your affidavit that you had not seen Newman for the last five or six months?

A. I have not seen him since last winter; how long it is I do not know. I have not seen him since last fall, but I do remember now—

Q. You are positive you have not seen him since last fall?

A. I do remember seeing him pass over in town and speaking to him, but I am not certain; that is my impression. I did not think about it. But, of course, I do not remember exactly, it was September or October or November—it must have been five months ago. I have not seen him for four or five months anyway at all. I happened to see him on the road up town.

Q. You mean to say you never happened to meet him on the road up town?

A. I did not see him anywheres—I generally came to his house—but I would see him on the ferry or on the road. I have only seen him three times in the whole year.

Q. And these three times were last fall?

A. Some time last fall here; in the fall.

Redirect Examination.

Q. (Mr. METCALFE.) You said a moment ago that you did see him in town; what town do you mean?

A. Here in the city.

Q. In the city of Seattle?

A. I think I saw him somewheres on the dock coming off or on, I do not know which.

Q. You mean on this side of the bay, in the city of Seattle? A. I think so; but some time last fall.

Q. Mr. Martin asked you if you did not know that he was lying flat on his back and crippled for life. You never did know anything of that kind?

A. I never had visited at the house, and only from the information of my neighbors, they told me so; they all told me so.

Q. Now, a while ago you said that you felt bad that you had given an affidavit; what do you mean by that?

A. Well, in making it so strong as I did. I felt bad that I had—I thought to myself that they may have been wrong about it.

Q. Now, was it any of Newman's friends that came to speak to you about this affidavit?

A. No. I told Mr. Jenkins that I was thrown off my—that I was misguided in regard to this matter and this man Gardner rather fooled me and got me into going over to the house, because I did not know that there had been a judgment taken, and so I felt ashamed that I would go there when they had already gotten a judgment.

Q. Now then, the fact that you felt bad about your affidavit, and having made it so strong, I want to ask you this question: Whether or not the testimony you have given here is true as you recollect and understand it?

A. As I recollect and understand it, yes.

Q. (Mr. MARTIN.) You swore to the affidavit on the 27th day of April? A. I do not remember the date.

Q. In the month of April, 1900?

A. I guess that is the month.

Q. Before Mr. Jurey? A. Yes, sir.

Q. You signed that affidavit? A. Yes, sir.

Q. You read it over? A. He read it to me.

Q. In that affidavit you swear that you had seen the said Newman several times during the last four months walking up the hill at West Seattle from the ferry landing without assistance from anyone, or without the assistance of crutches, or even a cane; that he moves along very well and climbs the said hill with as much ease as affiant could do, who is strong and healthy, and I ask you if that is true or false?

A. Well, at the time I saw him he moved—

Q. When you made that affidavit you had not seen him during the last four or five months?

A. Four or five months; it was four or five months.

Q. And you stated in that affidavit on the 27th of April you had seen him going up and down the hill several times, is not that true?

A. I do not know what you call several times—twice would be several times.

Q. Within the last four months.

A. Well, if it is four months it is wrong, because that

was six months—pretty near six months; the last time would be four months—just about four months—that I saw him.

Q. This affidavit was made on the 27th of April?

A. Yes, sir.

Q. And was made for the purpose of trying to lead the Circuit Court of Appeals to believe that the man had recovered, and was running up and down the hills there during the last four or five months?

A. Apparently he walked straight; he did not stoop.

Q. You knew at the time this was not true, that you never have seen him going up and down in the last four or five months several times, did you not?

A. Well, the last five months, not the last four months, several times—no, sir; that is a mistake if that is there.

Q. (Mr. METCALFE.) What you mean to say is that the testimony you gave in your affidavit is substantially correct; there may be some portions of it that are inaccurate? A. Well, I think there is some.

Q. As to the main portions, it is correct?

A. As to the time I first saw him when he first came out, that is right I know; but the last time I am not certain; I think he had no cane the last time; I am not certain about that.

(Testimony of witness closed.)

M. B. HARBEN, a witness called on behalf of the appellants, being first duly sworn, testified as follows:

Q. (Mr. METCALFE.) Where do you reside?

A. Seattle.

Q. How long have you lived in Seattle?

A. Ten years, and a little over.

Q. What is your business, Mr. Harben?

A. Detective.

Q. Do you know the appellee, Charles H. Newman?

A. I have seen him a few times.

Q. Were you ever at his house?

A. Yes, sir.

Q. At what time?

A. I think it was on the 24th of April.

Q. Tell what occurred there, if you please?

A. Well, when I first went to the house I went to inquire for Mr. Newman, and I was informed by the lady that he was then in Seattle.

Mr. MARTIN.—I object to the witness' statement as to what he was informed by the lady or anybody else as hearsay, and inadmissible and simply cumbering the record, and I move to strike it out for that reason.

A. And on the following day, the 25th, I called again, and he was at home. I had a conversation with him—but before I get to that, General, the point that occurred to me I have never mentioned to you before, and that is on the 24th when I went over, that was the day following the day Kelly was there. Kelly was there, I believe he testified, on the 23d, and on the 24th was when I met Ed Hansen down at this boat.

Q. Who is Ed Hansen?

A. He is a gentleman who lives at Alki Point, a light-house tender over there.

Q. What are his relations with Newman?

A. Well, he claims to be—

Mr. MARTIN.—I object to what relation he claims to be as cumbering the record, and I move to strike it out for that reason.

Q. A neighbor of Mr. Newman's?

A. Not a close neighbor, but he was acquainted with him.

Q. These were transactions taking place in the presence of Mr. Newman?

A. Oh, we were standing there at this boat talking.

Q. What boat?

A. The boat that is owned by Mr. Newman, both of these boats at that date had been partially painted, and I got some of the paint on my own coat, and I know positively that it was fresh paint; and the bulk of this boat was freshly painted.

Q. You mean the boat that Kelly testified about?

A. Yes, the keel was painted with what they call copper paint, a dark, reddish color; and there was some light paint being put on a small boat alongside the sailboat; a stripe that was being done, I suppose it was white paint; although the color being put over the dark was about the color of the card-board up there. It was light; I got some of that paint on my coat, and I know that it was fresh.

Mr. MARTIN.—I move to strike the answer as entirely hearsay.

A. (Continuing.) Now, on the 25th when I met Mr. Newman I had a conversation with him and talked about this boat, and asked him if he wanted to make a sale; I told him I thought I might possibly make a sale of it for him, and asked him, when he said he was willing to

make the sale, to give me a commission, and I wanted him to walk down to the boat to show it to me. At that he declined to do it, and discussed the boat and the machinery.

Q. Where was he standing at that time?

A. He was standing in his door; the second time when I asked him to go down he refused, making this remark. He says, "It is not good for me to run around too much just now." Mr. Newman is a man that is very strong and healthy looking, and he stood erect in his door and presented a very strong, healthy appearance.

Q. Did he have any cane or crutch to support himself with?

A. Not at that time; no, sir.

Q. He came to the door when you met Mr. Newman at the house?

A. Why, I think that the lady came first and then called him. But I am not sure about that.

Q. Did you come on the porch?

A. I stood on the porch talking to him for possibly fifteen minutes—ten or fifteen minutes.

Q. Did he walk from inside of the house?

A. I do not think that he shifted either foot an inch while he was there; he stood without moving at all in that erect position the entire time.

Q. How long were you talking with him?

A. Possibly ten or fifteen minutes.

Q. Did he walk from inside of the house out on the porch?

A. Yes, he walked through the hallway.

Q. Did he have any assistance of any kind with him?

A. None whatever. I could see him making through the hall; there was nothing but glass something like this

in the door, and I could see him plainly coming through the hall.

Q. When did you subsequently see Mr. Newman?

A. The last time that I saw him was a week ago—Monday, May 14th.

Q. That was since you made this affidavit?

A. Yes, sir. I had gone out on Alki Point to see a couple of gentlemen—Mr. Cooper and Stevenson and some parties—and on my way back I met Mr. Newman on the beach.

Q. How far from his house?

A. Well, his house is, say, a half a mile from the dock—the way that you come down it would be a half a mile, and where I saw him he was probably three-quarters of a mile further around the point, around on the beach; and I watched him until he approached the bath-house. At that time I met him; the first time that I saw him was some two or three hundred yards ahead. He had a cane that day.

Q. What date was this? A. I think May 14th.

Q. Did you see him on the beach?

A. Yes, he was walking along there and had this cane; just carrying it in his hand, and after he observed—

Q. Was he using it for a support?

A. When I saw him first he did not use it for a support, and only put it on the walk occasionally. And after he saw me he did not put the weight of his body on it at any time, even after he passed me. I turned and watched him walk a hundred yards further up by the bath-houses.

Q. The point at which you met him was a mile and a quarter from Mr. Newman's house?

A. Yes, fully that far. It would probably be less than a half a mile in a direct line, but you could not go on a direct line very well; I would not want to go that way.

Q. How would he have had to come to the point where you saw him?

A. There are two ways that he could have got there; one was to come down that hill, at least up from the top, and then go around the beach; and another way would be to go over the hill down there, as if you were going to Alki Point until the road struck the beach, and come down the other way; but he was coming from this way out, so that he must have come down the regular road down to the dock, and then around the beach.

Q. How about this hill that you speak of, was that any easier than the one that Mr. Coombs testified about?

A. I think it is a little worse.

Q. How is this hill, what sort of a hill is this?

A. It is a very steep grade.

Q. Is it easy or tiresome to walk up?

A. Well, it is not easy. It is probably like Cherry street for two or three blocks from Second avenue, going up the hill; just about such a hill, quite steep.

Q. Tiresome for an ordinary man?

A. Yes, for anyone walking at regular speed it would cut his wind down.

Q. Do you know Ed Hanson? A. Yes, sir.

Q. Is he a friend of Newman's?

A. He says he is.

Mr. MARTIN.—I object as hearsay.

Q. He lives over that at West Seattle?

A. No, he lives at Alki Point. A mile and a half or two miles beyond West Seattle.

Q. Did he ever talk with you about Newman?

A. Yes, that day that we were talking at the dock about the schooner, one day last week.

Q. Did you have a conversation as to Newman's condition?

A. What he voluntarily told me; I asked him no questions. He stated to me—he went with me from this boat up to Newman's house and introduced me to Newman. He had no idea what my business was, and after we got up there and found Newman was in Seattle we walked back.

Mr. MARTIN.—I move to strike the answer as hearsay and incompetent.

Q. Go ahead.

A. He went on to explain to me that Newman had got hurt in a collision between a steamboat and the brigantine "Blakeley," and that for quite a while Newman was confined to his bed and had to have a good deal of assistance, but for the last three or four months had been all right—the same as anyone else. That he had a judgment against the company, and that he was all right now, that he was probably entitled to all that he would ever get because of the suffering that he went through at first.

Cross-Examination.

Q. (Mr. MARTIN.) What were you doing over on the beach on this 14th day of May?

A. I was coming down from beyond Alki Point to the boat landing.

Q. What were you doing at Alki Point?

A. I went there to interview some parties.

Q. You went there to interview some parties?

A. Yes, sir.

Q. Alki Point is where?

A. Beyond West Seattle about two miles; I was probably two miles beyond that.

Q. As you came back you found him to the west of the West Seattle Landing? A. Yes, sir.

Q. About how far to the west of the West Seattle landing?

A. Not less than a half a mile, possibly three-quarters.

Q. On the beach?

A. Yes, walking along the beach.

Q. Out where the boat-houses are?

A. Bath-houses.

Q. You saw him there? A. Yes, sir.

Q. You are sure that was on the 14th day of May?

A. Yes, sir; I am pretty sure it was the 14th.

Q. And you made a note of it at the time?

A. Well, I think I did, but I cannot find it in my notes; I was looking over to see.

Q. What time of day was it you saw him?

A. About half-past two in the afternoon.

Q. You are sure about that? A. Yes, sir.

Q. Sure that was the hour?

A. I left the hotel at West Seattle at half-past eleven and walked quite rapidly until I got out to where these parties were at work on the road, and I got back just in time to take the boat that leaves there at 3:05 to come over here.

Q. You had been over trying to work up testimony in this case?

A. I was over there trying to find out the facts in the case.

Q. Trying to work up testimony?

A. Well, I was over there on this day to find out one particular fact, whether it would be for the company or against the company, I had no means of knowing. And between you and I, I did not care. I wanted to find out a certain fact.

Q. You had been over there trying to work up testimony, trying to get a man by the name of Murphy—to see if you could not get him to come in here and perjure himself by testifying that Newman had been working on the grade?

A. I did not try to get him to come here and perjure himself. I wanted him to state positively whether the man named Newman working for him was this man Newman.

Q. You knew it was not?

A. I thought it was.

Q. You knew it was not?

A. I did not know anything of the kind.

Q. You wanted him to testify that he was, did you not?

A. I did not; I did not ask him to.

Q. You were trying to get him to do it?

A. I did not.

Q. And you tried to get the woman at the boarding-house to testify that he had been boarding there?

A. I wanted to know whether he had or not.

Q. You wanted to get her to do so?

A. I did not.

Q. And did they not tell you that they would have nothing to do with it? A. They did not.

Q. They did not. A. No, sir.

Q. Had no such conversation with either of them?

A. I had a conversation with the lady at that boarding-house; I asked her; of course she stated that she knew this C. H. Newman; and I asked her if he ever boarded at her house, and she said not; and I know she told the truth.

Q. But, notwithstanding that, did not you ask her if she would come and testify that he had been?

A. I did not ask her to testify to anything; I never asked the question. At the time this man Newman was working for Murphy, Murphy's men did not board with this woman at all.

Q. What man Newman?

A. This man, H. Newman, that Murphy's book showed worked for him between the 12th of March and the 19th, and Murphy gives a description that tallies exactly with this C. H. Newman, and Murphy afterward went to see Newman to see whether he was the same man or not, and he says he looks exactly like him; he has the same red complexion.

Q. And he told you he would have nothing to do with it, and you were attempting to get a lot of perjured testimony to that effect?

A. The words "perjured testimony" were never mentioned.

Q. He told you that he would have nothing to do with it? A. That question was not discussed.

Q. I ask you whether he told you that, or whether he did not? A. I say he did not.

Q. He did not? A. I say he did not.

Q. How much money did you offer him if he would come in and testify that Newman had been working for him? A. I never offered him a cent.

Q. You did not? A. No, sir; not a cent.

Q. Not a cent? A. Not a penny.

Q. How much money did you offer the boarding-house keeper? A. The boarding-house keeper?

Q. If she would come in and testify?

A. I never offered her a cent.

Q. You never did.

A. I never discussed it.

Q. Don't you know that Gardner or someone else besides you were trying to procure such arrangements?

A. Not that I know of. I do not know anything about it if he did. If he did he never told me about it; I do not think he did. I think that matter was left in my hands.

Q. You are positive that was May 14th?

A. Yes, it was Monday, May 14th.

Q. What kind of weather was it that day?

A. Well, it was a pretty warm day.

Q. Was not raining or anything?

A. No, I did not get wet.

Q. It was not raining?

A. I believe it did rain after I got back to Seattle, in the evening, but I am not sure about that.

Q. Not during the daytime while you were ever there? A. I got back here about 3:30.

Q. You said it was a very warm day?

A. It was warm, quite warm.

Q. (Mr. METCALFE.) In the morning, at the time that you met Newman?

A. On the day that I was over there.

Q. (Mr. MARTIN.) At the time that you met Newman? A. Yes.

Q. Nice, clear day, was it? A. Yes, sir.

Q. Never rained at all?

A. No, sir. After I got back to Seattle it did start in raining. I know some two or three trips I made over there it did rain.

Q. How long have you been in the detective business?

A. Oh, not a great while. This time about two or three months.

Q. What business have you been engaged in?

A. I have been in a variety of different businesses.

Q. What are some of them?

A. Well, I have been clerking in the county clerk's office, and running a cigar business here in town, and I have done a little soliciting for insurance, and went to Alaska on a prospecting proposition, and a good many different things, and a good deal of the time doing nothing. There is one business I have never been engaged in, and that is trying to get people to testify falsely. I never asked anybody to do that.

Q. You never did.

A. No, sir. I have never been asked to do that, and I never have suggested it to anybody.

Q. If Murphy testifies to that he will testify to something that is not true? A. Undoubtedly.

Q. And the same as to the woman?

A. Undoubtedly, if they testified to anything of that kind. I do not think they ever told you anything of that kind.

(Testimony of witness closed.)

At this time further proceedings were adjourned until May 30th, at ten o'clock A. M.

Seattle, May 30, 1900.

Continuation of proceedings pursuant to adjournment.
2 o'clock P. M.

Present: J. B. Metcalfe, Esq., of proctors for the appellants; William Martin, Esq., of proctors for the appellee.

CAPTAIN J. WAITE, a witness called on behalf of the appellants, being first duly sworn, testified as follows:

Q. (Mr. METCALFE.) What is your full name?

A. William J. Waite.

Q. What is your business, Captain?

A. Captain of the West Seattle ferry.

Q. What has been your business?

A. Piloting and captain of steamboats for the last thirty-five years.

Q. Master mariner?

A. Yes, sir.

Q. How long have you been a master mariner?

A. It has been about twenty-five years.

Q. On what waters, captain?

A. Puget Sound waters.

Q. Twenty-five years on Puget Sound waters?

A. Yes, sir.

Q. How long have you been master of the West Seattle ferry between the city of Seattle and West Seattle?

A. About nine years.

Q. Do you know Charles H. Newman?

A. I have seen him.

Q. The appellee in this case?

A. Yes, sir.

Q. How long have you known him?

A. I should judge about two years, seen him going back and forth on the ferry. I knew him where he was working at the Oceanic Packing Company.

Q. Was that before he was supposed to have been injured?

A. Oh, yes.

Q. You knew him, then, when he was working at the Oceanic Packing Company's place, where is that?

A. West Seattle.

Q. How long has that been there?

A. Well, that is probably about two years ago, probably two years and a half.

Q. You know that Newman claims to have been injured in the collision between the steamship "Homer" and the brigantine "Blakeley"?

A. Yes, sir.

Q. Have you seen Newman crossing on the ferry here in the last—within what time, how long ago?

A. Well, I have seen him off and on, now, for the last two or three months.

Q. You made an affidavit, I think, in the continuance of the case from the time it was set for May 9 at San Francisco before the Circuit Court of Appeals, at that

time you stated, I think, that you had seen him about three months before that several times?

A. Probably about four months, I did not keep any correct time of it at all.

Q. Where did you see him, Captain Waite?

A. On the ferry, going back and forth on the ferry.

Q. Did Mr. Newman appear to be assisted by anybody when he was going backward and forward?

A. No, sir.

Q. Did you notice whether he used crutches or a cane?

A. I seen him several times with a cane.

Q. Did you ever see him without a cane?

A. I saw him the other day.

Q. How long since?

A. About two weeks ago, I think it was.

Q. Please fix that as near as you can, the date of it?

A. I could not say positively, but I should judge it was about two weeks ago I saw him coming on board and I called the attention of a man by the name of Fredericks that Newman looked all right now, and he says, "Yes, I guess he was not hurt very much."

Mr. MARTIN.—I move to strike that out as not responsive to the question.

Q. At this particular time here, within the last two weeks that you speak of, was Mr. Newman then assisted by anybody coming on board? A. No, sir.

Q. Did he use a cane or crutch when coming on board?

A. He had no cane or crutch when I saw him.

Q. What was his appearance, Captain, as to his physical health at that time?

A. He looked to me all right, he did not seem to have anything the matter with him.

Q. Did he walk naturally?

A. Well, I think he limped a little.

Cross-Examination.

Q. (Mr. MARTIN.) Where was he when you saw him?

A. In the pilot-house.

Q. Yes.

A. At the wheel, standing at the wheel; I saw him coming down the slip.

Q. Was the boat at a standstill?

A. Yes, sir, tied up in the slip.

Q. What were you doing, standing at the wheel?

A. Yes, sir, looking at the passengers as they came on board, it was about five minutes before we were ready to go and I always stand there when the five minute bell rings.

Q. You say you saw him limp?

A. He limped a very little, yes, but had no cane.

Q. How is your sight, Captain?

A. Well, it is pretty fair, I guess.

Q. Have not you some trouble in seeing at a little distance? A. Not that I am aware of, no sir.

Q. How do you know that it was Newman that you saw?

A. Well, how do I know that you are sitting there?

Q. Could not it have been someone else that you saw?

A. No, I do not think it was; I think I ought to know him, going back and forth there.

Q. You say you were well acquainted with him before he got hurt?

A. Not well acquainted with him, but saw him go back and forth on the ferry and spoke to him, said, "How do you do, Mr. Newman?" several times, he always addressed me, "How do you do, Captain."

Q. You do not know anything about how he was supported around his waist, do you? A. No, sir.

Q. Whether he had a steel jacket on or not?

A. How he was what?

Q. Whether he wears a steel jacket for the support of his body?

A. No, sir, I do not know anything about that.

Q. You say there was nobody with him?

A. No, no one with him at all. He had a bundle in his hand.

Q. When was that you saw him, you say?

A. The last time I saw him, as I said before, was about two weeks ago, I should judge.

Q. What date was it?

A. I do not remember the date.

Q. (Mr. METCALFE.) What date is this?

A. Supposed to be the 30th of the month.

Q. (Mr. MARTIN.) What date was it you saw him at that time?

A. About two weeks ago, I should judge.

Q. What day of the week was it you saw him?

A. I could not say that particular day.

Q. You cannot fix the date on which you saw him?

A. I just happened to see him coming down the slip the same as—

Q. You say that was not to exceed two weeks ago?

A. I should say about two weeks ago, on Saturday, it seems to me it was on Saturday, if I remember right.

Q. It was on Saturday? A. Yes, sir.

Q. And that would be, then, the 12th or the 19th?

A. When was Saturday?

Q. Saturday would be the 12th or the 19th?

A. Well, probably it might have been Saturday or Friday, I did not pay particular attention as to the date, I just happened to see him coming down the slip.

Q. Is there not any way that you could fix the date?

A. None that I know of, I just saw engine run down the street here at a fire; I know the engine ran down apparently to go to a fire, I could not fix the date of it at all, that was half an hour ago.

Q. You know that was the day, don't you?

A. Yes, if you should ask me a week from now I should say that is probably on such a day, but I am not sure.

Q. You could say it was the same day that you gave your testimony in such and such a case, could you not?

A. Yes, sir.

Q. Now, cannot you say some occurrence like that you know the date of, so that you could fix the date?

A. I do not think that I could, because I did not pay attention enough to it.

Q. We are entitled, Captain, to know the date. It may be that you are entirely mistaken; we want to be able to prove that he was not there, and therefore we want to fix the date, and it is important that you should do so.

Mr. METCALFE.—We are not afraid that you can disprove it.

A. I cannot fix it because I do not know exactly.

Q. You are positive of it that it was on Saturday, are you?

A. No, sir, I am not positive that it was Saturday.

Q. You stated a moment ago it was Saturday?

A. It runs in my mind at the present time that it was on Saturday, but I could not fix the date exactly. I will tell you what made me notice him so much, seeing him walking down the slip I said to him—

Q. You were up in the pilot-house, were you?

A. I was in the pilot-house.

Q. Did you speak to anyone else at that time about it?

A. I think Fredericks was standing in the pilot-house and I said, "That fellow looks to me as if he was not hurt very much."

Q. You made that remark?

A. Yes. He knows the man very well himself; in fact, I think he worked for him.

Q. Where is Fredericks?

A. He is in town somewhere, I am not quite positive, but I think it was—

Q. We want you to know something positive. You say you do not think that he was standing there?

A. I did not say that. I think that he was standing there, he is always in the pilot-house when he goes over.

Q. You say now that you spoke to him at that time, you are positive of that as to anything else you have testified to?

A. No, I am not as positive as that I saw Newman.

Q. Then, you will not swear that you spoke to Fred-

ericks about it, and said that you did not believe that he was hurt very much?

A. No, sir, I will not swear positively anything of that kind.

Q. Then, why did you say a moment ago that you did say that?

A. Well, I think that he was. I think that he was standing at the pilot-house reading the paper, and he sat on a seat about that high (showing). I would not swear to it positively because he comes and sits in the pilot-house.

Q. You have talked this matter over with Mr. Metcalfe, have you not?

A. No, sir.

Q. What?

A. I have simply—

Q. Answer my question.

A. No, sir, I have not talked it over with him.

Q. You have not?

Mr. METCALFE.—Not since he made the affidavit.

Mr. MARTIN.—I object to the counsel prompting the witness.

Mr. METCALFE.—Just state the facts.

Q. You say you have not talked that over with Mr. Metcalfe?

A. Not as to this statement with Metcalfe.

Q. You were at his office?

A. He sent for me.

Q. You signed the affidavit?

A. Yes, sir.

(Testimony of witness closed.)

E. A. GARDNER, a witness called on behalf of the appellants, being first duly sworn, testified as follows:

Q. (Mr. METCALFE.) Give your full name?

A. Erwin Alonzo Gardner.

Q. What is your business?

A. I conduct a detective agency in this city.

Q. Do you know C. H. Newman, the appellee in this case?

A. I know him.

Q. Ever see him, ever meet him? A. Yes, sir.

Q. Now, please state to the commissioner—

Mr. MARTIN.—I object to the competency of this witness. And I want to question the witness before he proceeds.

Q. (Mr. MARTIN.) How long have you resided here?

Mr. METCALFE.—How long have you resided here?

Mr. MARTIN.—I want to make my objections to the competency and I propose to show that the witness is not competent to testify.

Q. (Mr. METCALFE.) Mr. Gardner, how long have you lived on Puget Sound?

A. Nineteen years this fall in Seattle.

Q. In that time what has been your business as near as you can recollect? Run over your life if you want to.

A. During the nineteen years?

Q. Yes.

A. I was part of the time in the police department, and part of the time in the customs service, United States Customs, and the balance of the time I have been conducting a detective business here.

Q. Now then, do you know, as I asked you before, the appellee in this case, C. H. Newman, state when you last saw him and under what circumstances and how you came to know him?

Mr. MARTIN.—I object to that and I want to ask the witness some preliminary questions.

Mr. METCALFE.—I desire to have Mr. Gardner give his testimony here, as proctor for appellee in this case can ask Mr. Gardner on cross-examination any question that he wants to and he will answer.

Mr. MARTIN.—I propose that the witness shall not testify in this case.

Q. (Mr. MARTIN.) You understand, Mr. Gardner, that we have a statute here in this state providing that persons that have been convicted of certain crimes cannot testify, do you not?

A. I am not familiar with your statutes on that subject.

Q. I ask you, Mr. Gardner, as a preliminary question, if you have ever been convicted of a crime?

Mr. METCALFE.—You may state what the facts are and that you were pardoned by the President of the United States, and then go on and state any other facts that you want to.

Mr. MARTIN.—I want him to show his competency to testify first.

A. Of course, if they expect to bolster up the steal they are attempting to perpetrate against the owner of the Homer, I am ready to answer their questions. You are the first man that has ever asked that question, and I have lived here nearly twenty years. No gentleman ever asked it and no gentleman ever would ask it.

Q. I ask you if you have? A. I will answer you.

Q. State the facts.

Mr. METCALFE.—Just take your time, Mr. Gardner, and relate the facts for the benefit of Mr. Martin.

Mr. MARTIN.—I ask you if you have?

Mr. METCALFE.—If you are willing to go on record in such a manner as that.

Mr. MARTIN.—I am willing to stand on the laws of this state.

Mr. METCALFE.—You are entitled to the benefit of such a method of practice.

A. I am willing to say that the chances are that the counsel did not know the facts. The laws of this state do not touch the offense with which I was charged. You asked the question if I was ever convicted of a crime?

Q. Yes.

A. Well, I suppose that it would be called a crime. I suppose under the United States Statutes it was a crime. I was convicted under section 3082 of the Revised Statutes of the United States, which prescribes the penalty for the introduction of goods into the United States, dutiable goods in the United States, on which the duty had not been paid or secured to be paid.

Q. Were you ever—

A. (Continuing.) I will answer this question now that you have opened it. I will finish it. You want to know why and the circumstances under which that conviction was obtained; they are as follows:

Mr. MARTIN.—I object to the circumstances.

A. It don't make any difference.

Mr. METCALFE.—You have brought that out and it has got to go down.

A. In the indictment charging me with the offense that I have stated was the name of another person—I do not suppose that I am compelled to state—I do not want to state that—

Mr. METCALFE.—State his position in society, if you want to.

Mr. MARTIN.—I object to cumbering the record.

A. (Continuing.) The attitude you are taking now is similar to the attitude—

Mr. MARTIN.—We will show your attitude in this case.

A. (Continuing.) There was the name of another party in the case, and the case was called in the United States Court at Albany in New York, in October, 1888. The counsel for the person whose name appeared in that indictment with mine, had entered into an agreement with Daniel Lockwood, United States District Attorney for the Northern District of New York, that agreement providing that his client should be tried first at the term of stated. It was a holdover term from the Utica term, and the court never sat more than two weeks at Albany, and it was distinctly understood that the trial of the case that I have mentioned would consume all the time of that term not consumed in the disposition of minor cases, selling liquor to Indians and so forth on the reservation. My counsel, Richard Crowley, was consulted in the matter and agreed that the other case should be tried at the Albany term. When the time arrived and the District Attorney, Mr. Lockwood, was ready to take up the trial of these smuggling cases, he announced to the Court that the Gardner case would be tried first. It was a direct violation of his agreement with Judge Brundage, that his client's case should be tried first. No preparation had been made for my defense at that time, of course, for the reason I have stated, that the term of

court would be consumed in the trial of the other case. I expected to be tried under the agreement that had been entered into at Albany in January, and hence there was no preparation for my case. After considerable time had been consumed in arguing by the District Attorney and the counsel for the defendant, the judge announced that he would continue or grant a continuance of the Gardner case to the Albany term. That Gardner could not be tried at the Albany term in justice to him under the agreement that they had entered into, Judge Brundage's client had made preparations for his defense and was prepared to go to trial. At great expense to himself and to his client—I have gone a little further than I intended—when the Court announced that he would continue the Gardner case—

Mr. MARTIN.—This all goes in under my objection.

A. When the Court announced that he would continue the Gardner case, then the District Attorney, Mr. Lockwood, announced that he would continue the other case, for which Judge Brundage was counsel, to the Albany term. Judge Brundage's client had made every preparation for his defense at great expense. They came to me and said: "It means everything to us to be able to go to trial at this term of court, inasmuch as we have prepared for it, and if you insist on your continuance to prepare for your trial, it means everything to us and possibly defeat, because of the political conditions that are involved in this case." It was explained in the discussion the situation fully and at the end of that day I announced that I would go to trial rather than force the other man in the indictment to a continuance. I

went to trial without a witness; there was not one word spoken in my defense; I entered my plea of not guilty to the case, and the government introduced its evidence and the case was closed. I was convicted under these conditions.

Q. (Mr. METCALFE.) What has been the result of that conviction, state whether the President of the United States—

A. The President of the United States has granted me a full and unconditional pardon. Understand that the conviction was upon section 3082 of the Revised Statutes, which is a misdemeanor, punishable by one day's imprisonment or one dollar fine. It is not a felony. I have never been charged with a felony, and I have never been charged with attempting to bunco anybody out of any money.

Q. (Mr. MARTIN.) Is that the only offense you have ever been convicted of?

A. The only offense that I was ever charged with.

Q. You were never convicted of smuggling opium out here or plead guilty to a charge of smuggling opium?

A. I have answered your question, sir. That is the only offense that I have ever been charged with and if you can produce any other offense that I was ever charged with—I am under oath.

Q. Then, you never were convicted out here in this state of smuggling opium?

A. Nor any other. I never was convicted of smuggling opium or any other offense.

Mr. MARTIN.—I had heard that Mr. Gardner had been convicted of some crime, I did not know what it was. The statute, section 4215 of McLaughlin's Code, is

as follows: Section 4215—Conviction of crime. No person offered as a witness shall be excluded from giving evidence by reason of conviction for crime, but such conviction may be shown to affect his credibility: Provided, that any person who shall have been convicted of the crime of perjury shall not be a competent witness in any case, unless such conviction shall have been reversed, or unless he shall have received a pardon. 1891, 33, 1; 2 H. 1647.”

Mr. METCALFE.—You are not contending that he was convicted of perjury.

Mr. MARTIN.—I was asking him to say—

Mr. METCALFE.—Are you asking Mr. Gardner whether he was convicted of perjury under that statute?

Mr. MARTIN.—I was asking Mr. **Martin* if he was convicted of a crime and what it was.

Mr. METCALFE.—I desire the record to show this proceeding, so that the Court will see your attitude in this matter. Don't you know that there is a statute which provides that when a pardon has been granted that it exonerates a man fully and entirely, don't you know that?

Mr. MARTIN.—This statute is the only statute that we have relating to the matter, and if the facts had brought him under this section I should have opposed his testifying.

Mr. METCALFE.—You are not candid or fair in the matter. It is but fair to the witness that the witness should show the statements that have passed between counsel in this matter, so that the Court may know the attitude of the counsel for the appellee in this case.

*This appears “Martin” in original record.

Q. (Mr. METCALFE.) Now then, do you know, as I asked you before, the appellee in this case, Mr. C. H. Newman; just state when you last saw him and under what circumstances and how you came to know him?

A. I met Mr. C. H. Newman at his residence in West Seattle on the afternoon of the day—

Q. State who went with you at that time?

A. In May or about the middle of May, I do not remember the date or the day of the week.

Q. May, 1900?

A. May 19, 1900. Mr. Mike Kelly was with me and also my stenographer. I went to the Newman residence and was shown into the house by Mrs. Newman, and I asked the gentleman who met me in the house if his name was Newman and he said it was, and I told him that my name was E. A. Gardner and that I represented the owners of the "Homer," that I was employed in the case, against him. That I had learned that he and others had charged that certain statements or affidavits that had been made were false, and that I had come to him for the purpose of righting any wrong, if any had been inflicted, and to give him an opportunity to show that they were false, if such was true. He refused to talk with me and absolutely refused to answer any of my questions.

Mr. MARTIN.—I object as incompetent, irrelevant and immaterial and move to strike the answer as cumbering the record.

Q. Continue, Mr. Gardner.

A. I said to Mr. Newman that I did not desire to in any way do him an injury and that my client did not fear the truth, and that I did not expect that he did when

I came to his house, but I could not get him to make any statement or to answer any question, and I bid him good day. That is the only time that I ever saw Mr. Newman.

Q. Who was present with you at that conversation?

A. I have stated.

Q. Who were they?

A. I have stated who they were.

Q. Was Mike Kelly?

A. Yes, sir.

Q. I will ask you at that time if Mr. Kelly, to your knowledge, identified Mr. Newman as the party whom he met painting the sloop?

Mr. MARTIN.—I object as incompetent, irrelevant and immaterial and hearsay.

A. I asked Mr. Kelly as soon as we had left the house if the man we had just left was the man that he saw painting the sloop.

Mr. MARTIN.—I move to strike the answer for reasons last stated.

A. (Continuing.) And I said to Mr. Kelly, "If there is a shadow of doubt in your mind as to its being the man that you saw painting the sloop then say so and give him the benefit of the doubt, but if you are positive that he is the man then say so." And he did not have any question, he said, "There is no question at all but what that is the man."

Q. Mr. Gardner, while you were there, state, as far as you know, what the appearance of Mr. Newman was as to health and vigor from the appearances that you saw during that conversation with him in the presence of Mr. Kelly and yourself?

Mr. MARTIN.—I object, the witness has not been shown to be a competent witness to testify to the man's condition.

Q. You are not a doctor?

Mr. METCALFE.—We will admit that he is not a doctor, nor is he an expert.

A. The question is, what was his appearance?

Q. Yes, as to health and vigor.

A. Well, you ask a pretty difficult question for me to answer. Of course, I will answer it just exactly as it is. Mr. Newman was lying on a couch; I should say that there was as many as three or four pillows on the couch; he was lying on these pillows at full length on the couch. He looked pale as a man would who had been confined to the house for several days or two or three weeks. He was excited and nervous to quite an alarming degree.

Q. What did that proceed from, as you understood it?

Mr. MARTIN.—We object to what it proceeded from.

Q. What did he say to you?

A. Oh, he said to me that he had been annoyed a good deal by men calling at the house, and that it had annoyed him more particularly because of the effect that it had on his wife; and he said that he had thought of employing a bouncer, a man to stand at the door and drive them away, and said that he would do it himself if he felt better. I thought possibly his nervousness was the result of anger as much as anything else.

Q. Angry that you had come to him for the purpose of ascertaining these facts?

A. Yes, sir. I said to him, "Mr. Newman, I have come to you frankly and honorably and not for the pur-

pose to in any way take advantage of you or attempt to. If you were not painting that sloop it would be easy for you to prove it, and if you were not working on the road, it would be easy for you to prove it. We are not afraid of the truth on these subjects and you should not be.”

Q. Mr. Gardner, I will ask you if you had anything to do with Mr. Mike Kelly, one of the witnesses in this case, going over to West Seattle?

A. I employed Mike Kelly to find a man by the name of Billy Gray. I think Billy Gray is the name of the man that I told Kelly I wanted to locate and that I thought that he could get a trace of his whereabouts by seeing a man by the name of Charles Newman that lived at West Seattle; and I asked some one who was in the office at that time from West Seattle—I do not remember just who it was—if they knew Charles Newman over there and they said that they did, and I asked them to tell Kelly just where Mr. Newman’s house was, the residence was, in order that he might go directly there and ascertain from Mr. Newman if he knew where Billy Gray was and Kelly started to locate Billy Gray. I told Kelly incidentally that I would like to know how Newman. I said, “If you see Newman, let me know what his physical condition is as you see it. I understand that he was hurt some time ago, and I would like to know if he is recovering or if he is not recovering. I would like to know what the facts are as to his condition. However, this is only incidental, Mr. Kelly; I am not particular about it, and do not spend any time on that, but find Mr. Gray for me.” That was Kelly’s employment by me, and he came in and reported that he

had seen Mr. Newman and Newman knew Gray, they had been shipmates together and that Newman identified the vessel that Gray was on, but thought that he was on some steamer, and I kept Kelly for two or three days looking for Gray.

Q. What was the real object in your sending Kelly over there—was it to ascertain about Newman or Gray? And tell whether Kelly knew what your object was?

A. Kelly did not know what I wanted.

Q. What was your object?

A. My object was to know what Newman's actual condition was; his physical condition, as well as a man could tell from observation.

Q. Then, your instructions to Kelly were what?

A. To locate Gray, Billy Gray, but to note in meeting this man Newman, if he met him, to note his condition and how he was getting along, what his physical condition was. Kelly returned and told me that he had seen Newman, that he found him painting his sloop and talked with him about Gray, and I asked him something about Newman, what his appearance was and what he was doing in addition to his painting the sloop, if he saw him walking, and he said he did not.

Q. I will ask you if you send men out from your office, whether that particular man knows the object, the real object of his visit?

Mr. MARTIN.—I object as incompetent, irrelevant and immaterial and cumbering the record.

A. That depends altogether on circumstances, General. All cases are not handled alike.

Q. Was Kelly in this instance to know what the real object of his mission was?

A. He was not, no, sir.

Q. Your object was to ascertain what in giving Kelly these instructions?

A. Well, I can better recall your instructions to me.

Q. Well.

A. I presume you remember where you met me and what the conversation was.

Q. Just state it.

A. I met General Metcalfe on First Avenue in front of the Pioneer Building, and he said to me that he wanted to talk with me on a matter of some importance to him. We stepped into Hardy & Hall's store. General Metcalfe said to me that he wanted to learn the facts concerning the physical condition of a man by the name of Charles Newman, and asked me if I could assist him in getting the exact physical condition of the man named, as near as it could be obtained from a person seeing him. I told him I could. As the result of that interview I sent Kelly, as I have already stated, to see Mr. Newman. My true purpose was to know what Mr. Newman's physical condition was, as well as Kelly could state it from seeing him.

Q. Did Kelly at that time know your true purpose from your instructions?

A. He did not know that I had any particular interest in Newman. I would like to have the record show before we get through, that I am authorized by several of the banks, whose names I will give, to refer to them as a reference at any time that I desire as to my standing in this community for truth and veracity; also to several of the prominent law firms in the city, and the

largest and most prominent business houses in the city, the names of which I will give if desired.

Q. Give them all.

A. The First National Bank.

Mr. MARTIN.—I object as cumbering the record. This is not admissible.

A. The Puget Sound National Bank, Dexter Horton & Company Bank, Washington National Bank—that is four of the banks; Messrs. Ballinger, Ronald & Battle; Struve, Allen, Hughes & McMicken; Schwabacher Bros. & Company; Redelsheimer & Company, and any reputable business house in town; not only that, but any reputable law firm in the town will testify as to my truth and veracity and integrity.

Cross-Examination.

Q. (Mr. MARTIN.) Now, your general purpose, Mr. Gardner, in sending Mr. Kelly over there, was to find out what you could about Newman?

A. My real purpose, I have stated that clearly.

Q. I insist on an answer.

A. My real purpose in sending Mr. Kelly to West Seattle was to ascertain what Charles H. Newman's physical condition was, as near as Mr. Kelly could tell from observations.

Q. Then, it was not for the purpose of finding this man Gray at all?

A. No, sir, it was not. I did not care about Gray, no more than I care about you.

Q. That is what I wanted to find out. Now, General Metcalfe suggested to you the advisability of pretending to be hunting for Gray?

A. No, sir, I do not think he did.

Q. Do you know Mr. Gray?

A. No, I do not know Mr. Gray.

Q. How did you come to pick on Mr. Gray?

A. I made some inquiries after I had got through with Mr. Metcalfe, to advise myself as to the ground that I was going to travel over.

Q. How did you come to inquire about Mr. Gray?

A. I don't know that I inquired after Mr. Gray; I inquired of the vessels that Mr. Newman had been in.

Q. You did not know Mr. Gray, did you?

A. I have said so.

Q. You did not know him?

A. I have said that I did not know him, but if you will give me time I will answer this just as intelligently — You cannot make me say something that I do not want to say, or that I do not know to be true. I said that I had made some investigation as to the vessels that Mr. Newman had been in, and who he had been shipmates with, and I learned that this man Gray had been shipmates with him, hence I suggested Gray as the man; I do not know who I learned that from.

Q. You know that Mr. Newman is a ship carpenter, don't you?

A. I could not swear to it, I do not know whether he is or not.

Q. You do not know whether he is or not?

A. No, sir, I do not know whether he is or not.

Q. Your investigations did not reveal that fact?

A. I did not care about that fact; I do not care whether he is a ship carpenter, or what he is, that had

nothing to do with me. Possibly I learned more about Mr. Newman than you would care to have me tell.

Mr. METCALFE.—Go on and tell any further facts that you know in the case that I have not brought out. I have only asked about such facts as advised of. You may state any further facts.

Q. (Mr. MARTIN.) You stated to Mr. Newman, did you, that you went over there as a friend of his, did you?

A. I did not, I did not say so to you, I made no such statement to him or to you either.

Q. You made a statement that you told Newman that you came over there, not for the purpose of doing him any wrong.

A. I made that statement.

Q. And yet you made that statement for the purpose of trying to see if you could not throw Newman off his guard, to see if you could not inadvertently get some statement from him that would be detrimental to him?

A. I did not.

Q. What did you have your stenographer over there for?

A. In order that there could be no equivocating or departure from the truth. My purpose in taking the stenographer over there was so that every thing should be taken down. You people had charged falsehood, and you charged that Kelly had lied and I know that Kelly had told the truth.

Q. You were not over there, were you?

A. No, but I know Mike Kelly.

Q. That is all right. I will bring in a lot of witnesses that know the parties and know facts.

A. That I have nothing to do with; but I say that I know Mike Kelly, and if you can impeach Mike Kelly in this matter, go ahead and do it.

Q. Now, you have been employed by these parties for the purpose of trying to procure some evidence with the intent of trying to reduce the judgment that was awarded in this case, have you not?

A. No, sir.

Q. You have not?

A. No, sir, I have not.

Q. You have not tried to do that?

A. No, sir, I have not.

Q. You have been quite anxious in trying to procure that evidence for the appellants, Mr. Metcalfe being their proctor, for the purpose of trying to reduce the judgment that Mr. Newman, have you not?

A. No, sir.

Q. Not at all?

A. No, sir, not at all.

Q. What were you paid for?

A. I was paid for the services rendered in the effort to show what the real true physical condition of Charles H. Newman was, and beyond that I know nothing; I do not know anything about a judgment.

Q. How much were you paid for it, Mr. Gardner?

Mr. METCALFE.—I object to that; you need not answer that question if you do not want to.

A. I am willing to state what I was paid.

Q. How much? A. \$20.80.

Q. Do you expect anything else?

A. I expect I will get pay for everything that I do.

If I ever do any work for you you will have to pay me.

Q. Have you an arrangement whereby you will get more?

A. I have an arrangement that I will get a per diem, my regular rate that I charge any client that I work for.

Q. Have you any arrangement whereby you are to get any money in the event they procure a favorable judgment upon any work that you have done?

A. If you knew me better you would not ask that kind of a question, but I will answer that question. I have no such arrangement and there has been no reference to the judgment made by General Metcalfe to me, nor reference to any compensation beyond my regular compensation, and there has been no talk about that.

Q. Then, you have not any arrangement as to a contingent fee?

A. No, most emphatically not. As I say, if you knew me better, you would know that I had no such arrangement, I do not trot in that class, I am conducting a legitimate detective business.

Redirect Examination.

Q. (Mr. METCALFE.) I understood you to say on your direct examination that you told Newman when you began your conversation, that you represented the case against him? A. I did, sir.

Q. Was that said so that Mr. Newman could understand it and could hear it?

A. Most emphatically, sir, it was.

Q. In whose presence was that said?

A. It was said in the presence of Mr. Newman and his wife, Mike Kelly and my stenographer.

Q. Mr. Gardner, you stated to the learned proctor for the appellee here, that there were other facts concerning Mr. Newman in this case, and relevant, that you did not tell, if he would permit you to tell them, what were they?

A. I have a statement made by a party who was ship-mate of Mr. Newman's.

(Testimony of witness closed.)

At this time further proceedings were adjourned until Friday, June 1, at 2 o'clock P. M.

Seattle, Wash., Friday, June 1, 1900.

Continuation of proceedings pursuant to agreement at two o'clock P. M.

ISAAC FREAR, a witness for and on behalf of appellant, called and duly sworn, testified:

(Mr. METCALFE.) What is your full name, Mr. Frear? A. Isaac Frear.

Q. What is your business, please?

A. Fruit and cigar stand.

Q. Just describe where that is, please?

A. Right next to the Seattle ferry.

Q. How long have you been there, Mr. Frear?

A. Been there ten months on the 7th of this last month.

Q. Do you know Mr. C. H. Newman?

A. I know him by sight, that is all.

Q. How long have you known him?

A. Well, the first time I seen him I suppose was about six weeks ago, or something like that; I couldn't say exactly just what date it was.

Q. It was about six weeks ago? A. Yes.

Q. Do you recollect seeing him in the city of Seattle about that time?

A. Yes, he was here all right.

Q. About what time, fix it as near as you can, Mr. Frear, please?

A. Well, I couldn't say exactly; I have no idea at all whether it was the first of the month or when it was, somewhere about a month or six weeks ago, but I couldn't say just exactly when it was.

Q. Do you mean the first of May?

A. I couldn't say exactly whether it was that or earlier.

Q. Further back than that?

A. Further back in April.

Q. Well, it would be anywhere between the first of May—well within the last four or five weeks?

A. Sometime in the last four or five weeks, I guess, I couldn't say for sure.

Q. You don't recollect the exact date, do you?

A. No, I don't.

Q. Do you recollect of having any conversation of any kind or character with him, or speaking to him on that day?

A. No, I don't know of nothing particular that I had with him at all.

Q. Well, do you recollect having a little talk with him on that day?

A. Oh, I passed the time of day to him and such as that.

Q. Do you recollect whether or not at that time, that you speak of now, as having seen him over—do you mean this was at your fruit shop right there?

A. Right at the stand there; he was waiting for a boat going over to West Seattle.

Q. Do you recollect of his saying anything at that time and place, about what he had with him or what he had come over for? A. I don't.

Q. Was there anything said about his having come for paints and oils that day?

A. Well, I couldn't say now—I wouldn't swear whether he said anything or not, I—

Q. Well, what was it he said about that, Mr. Frear?

Mr. MARTIN.—That is objected to; the witness says he can't remember what he said.

A. He just passed the time of day, you know, I don't know what it was; he was talking about something, but everybody was coming in and out all the time, you know, just passing remarks, you know, and I can't remember what everybody says.

Q. Do you remember anything that was said about that particular matter at that time?

Mr. MARTIN.—I object to counsel cross-examining his own witness in this manner.

A. I say, when a man is just talking to me, I am just passing backward and forward, you know, and I don't pay any attention to him at all.

Q. I know, but what was said by Mr. Newman at that time or by yourself as to what he had in his hand, or what he came for that day? Was there anything said at all about paints and oils?

A. Didn't say nothing to me about them.

Q. Well, did you hear him saying anything to anybody in your presence about them?

A. Not that I remember, I didn't.

Q. What?

A. He might have said something and I didn't pay any attention to it.

Q. He might have said something of that kind, and you not pay any attention to it?

Mr. MARTIN.—I object to counsel cross-examining his own witness. The witness has said several times that he does not remember of his saying anything at all.

Q. Now, I wish to call to your memory—you understand, Mr. Frear, that I am just simply trying to get at what you know about this—

A. Certainly, that is all right enough, but a man might say something to me, you know, and I running from one side of the stand to another, I wouldn't hear him.

Q. Do you recollect of seeing Mr. Kelly here, down there? A. I don't.

Q. Look at this gentleman here (pointing to Mr. Kelly), you have seen him before?

A. Oh, I have seen him before.

Q. Did he not come down about that time and ask you about Mr. Newman?

A. I couldn't say whether he did or not; I couldn't swear one way or the other, to tell you the truth.

Q. Do you recollect his saying anything about Mr. Newman's coming over that day to get some paints and oils?

Mr. MARTIN.—I object to that, for the reason that it makes no difference what was said between Kelly and the witness, it not being said in the presence of the appellee, it is simply hearsay and not admissible, and is simply encumbering the record.

Mr. METCALFE.—The witness is undoubtedly an adverse witness, and evidently does not want to testify against Mr. Newman.

Mr. MARTIN.—He is not an adverse witness at all.

Q. You don't want to testify against Mr. Newman, do you?

A. I have nothing against him nor nothing for him; he is a man I ain't acquainted with; I don't know what it is about or anything of the kind, and I don't want to take any sides in it.

Q. Well, you don't want to testify against Mr. Newman, do you?

A. If it is anything to the truth, I do.

Q. Wouldn't you rather testify for him than against him?

Mr. MARTIN.—I object to that as a cross-examination of counsel's own witness; the witness is trying to tell the truth and counsel is trying to get him to tell something else.

A. No, not a bit, none whatever.

Q. Now, was anything said in the presence of myself or Mr. Faben, the day we were down there, about Mr. Newman's having said he came over that day for paints and oils?

A. I might say something that he had a little bundle with him, or a bucket, I couldn't say, but it is very seldom a man comes in and tells me what his business is, what he is over for.

Q. That is all right, but was there anything said at that time about that particular fact?

Mr. MARTIN.—That is objected to as immaterial.

A. I did say something, you asked me if he had been over after paints and oils, and I said, I couldn't say he had, but he had a little bucket or parcel with him, and I think a little bucket, but whether it was a tin or wooden one, I couldn't say—didn't take any notice in particular; you asked me whether he had a stick with him or not, and I told you I couldn't say whether he had a cane or not.

Q. But he had a paper parcel and a bucket with him, did he?

A. I think he did, I am quite sure he did; I am not sure what they were, whether it was paint or oil or meat, or what it was.

Q. Your memory is very uncertain about all of this, is it?

A. Yes, it is certainly. I paid no attention to it, and a man may be talking to me there when I am jumping from one side to the other, and I pay no attention to it, and I not understand him sometimes.

Mr. METCALFE.—That is all.

Cross-Examination.

Q. (Mr. MARTIN.) You know that Mr. Newman is in a crippled condition, do you not?

A. Well, I heard so, and I have seen him pass by with a stick, and I think he is crippled; but then you can't tell by the looks of a man, whether he is or not; I am crippled myself, but no one would think it.

Q. He is crippled so he can't stoop over, is he not?

A. I couldn't say, sir. I never saw the man trying to stoop; I never saw the man trying to do that, whenever he was talking to me, he was standing straight.

Q. You say he looked as though he was crippled?

A. Yes, when he is walking, he does, that is all I can tell you.

Q. In every movement?

A. Yes, certainly he does.

Q. You are a man of considerable experience in the world?

A. Well, I have had a little bit; I have been working since I was about ten years of age.

Q. You know that it requires a very strong back for a man to follow the business of a ship carpenter?

A. I should say it does. At times he has got to lay on his back three or four hours at a time, when he is working.

Q. Do you think Mr. Newman will be able in the future to follow the business of a ship carpenter?

A. I couldn't say anything about that at all, whatever, I couldn't know anything at all about that.

Q. Does not his present condition indicate that he never will be able to do that?

A. Now, I couldn't say for that, I don't know anything about that, sir.

Mr. MARTIN.—That is all.

Redirect Examination.

Q. (By Mr. METCALFE.) You don't recollect, do you, the conversation that occurred between you and Mr. Kelly at or about the time that Mr. Newman came over to your place there and you saw him there that day, do you, Mr. Frear? A. I don't, sir.

Q. You do not remember that? A. I don't.

Mr. MARTIN.—I object to the question, because it does not make any difference whether he does or does not remember it, or whether he had a conversation with Mr. Kelly, or did not have a conversation with Mr. Kelly; he might have had a conversation with a hundred people, and I object to counsel purposely encumbering the record with such attempted hearsay stuff, and move to strike it all out, and move to strike all the evidence that counsel has given hitherto as simply hearsay evidence and not admissible.

Q. You recollect, Mr. Frear, do you, of having a conversation with Mr. Kelly, the gentleman here, present, at or about that time—this gentleman right here (pointing to Mr. Kelly)?

A. I don't know anything at all whether I seen that man that day or not, but I have seen him several times around that place, off and on, you know, coming back and forward.

Q. What I want to fix is this: Do you recollect his asking you some questions about Mr. Newman at any time?

A. I don't recollect his speaking about it that day.

Q. I don't mean that day, but any time?

Mr. MARTIN.—That is objected to as incompetent, irrelevant, and immaterial, and I move to strike it all out as immaterial.

Q. Do you recollect Mr. Kelly having any conversation with you about Mr. Newman at any time within the present year?

A. Why he might speak to me about it, I could not say he didn't; he might do it, but I paid no attention to

him, or he might talk to me there at the time,, and as I told you, men were coming in all the time and I was jumping from one place to another, and I didn't pay any attention, and may be I didn't hear him at all.

Q. What is your nationality, Mr. Frear?

Mr. MARTIN.—That is objected to as incompetent, irrelevant, and immaterial.

A. I have no knowledge of it whatever, to tell you the truth.

Q. I am asking you now, what nationality you are?

A. Oh, I am a Johnnie Bull.

Q. You are a what?

A. I am a Johnnie Bull, an Englishman. I belong to the county of Cumberland, north of England, that is where I belong.

Q. Do you recollect having a conversation about Mr. Newman with the witness here, Mr. Kelly, do you not?

Mr. MARTIN.—That is objected to because he has answered several times, that he does not recollect having any such conversation.

A. No, sir, I don't. I might have, I told you, but I have forgot it, if I did.

Mr. METCALFE.—That is all.

(Witness excused.)

MICHAEL KELLY, recalled as a witness on behalf of appellant, testified:

Q. (Mr. METCALFE.) Mr. Kelly, you recollect talking with Mr. Frear, the witness last on the stand?

A. Yes.

Q. Any time within the last six weeks, about the Newman case.

A. Yes, sir.

Q. State what that conversation was, and the date of that conversation?

Mr. MARTIN.—That is objected to as incompetent, irrelevant, immaterial, hearsay, and not admissible.

Mr. METCALFE.—The object of this testimony is to fix the date at which this conversation occurred which Mr. Frear seems unable to do.

A. Yes, it was on the 24th; I was at West Seattle on the 23d, and on the 24th I went down again, and I asked this gentleman if he knew Mr. Newman and he says, “Yes, he was over here a day or so ago after some paint and oil”—

Mr. MARTIN.—I move to strike out the answer of the witness as incompetent, irrelevant, and immaterial, and hearsay.

A. (Continuing.) That was about the remark, pretty near all that was said. I asked him another question about the matter and walked away.

Q. That was on what date?

A. That was on the 24th of April.

Q. He said that Mr. Newman said he was over for some paints and oils?

A. Yes, sir.

Mr. METCALFE.—That is all.

Cross-Examination.

Q. (Mr. MARTIN.) Mr. Kelly, how many times have you been over to West Seattle?

A. Twice, two trips—that is, lately you mean, regarding this case?

Q. Yes.

A. Of course I have been there hundreds of times before that.

Q. But concerning this case, how many trips have you made over there? A. Two trips.

Q. Haven't you been over there more than that?

A. No.

Q. That was on 23d and 24th?

A. No; the 23d and then since, I don't know just what date it was, I and Mr. Gardner went over—

Q. I thought you said you were over there then, and then again on the 24th—

A. No; the 24th I was down to this man's place, down to the slip, and didn't go over.

Q. His place is down on this side?

A. Yes, right here at the foot of the street; that was on the 24th.

Mr. MARTIN.—That is all.

(Witness excused.)

Adjourned.

Monday, June 11, 1900.

Continuation of proceedings pursuant to adjournment.

G. L. IDE, produced as a witness in behalf of appellant, being first duly sworn, testified as follows:

Q. (By Mr. JUREY.) What is your position?

A. Deputy United States marshal.

Q. I will ask you if you served that subpoena (showing) on Mr. Newman today?

A. Yes, sir, I served a copy of this—the copy was the same as this, though, there was no difference.

Q. On Charles H. Newman in West Seattle?

A. On Charles H. Newman in West Seattle.

Q. State to the commissioner what occurred when you served the subpoena on him?

A. I simply went to the door and he came to the door first to look out, parted the curtain and looked out and then came to the door and opened it, and I started to talk to him, and he shut the door in my face—he asked first what I wanted—he said, “If you have any business with me, what is it?” And I said I was the deputy United States Marshal and had a paper to serve on him, and he opened the door and I stepped in the hall, and I handed it to him and read it to him and handed him the copy, and stood talking a few minutes, and I tendered him the witness fees and he refused to accept them, and then we stopped and talked about it for some time, probably a minute, or a half a minute, and then he turned around and said, “I will call my wife”; and he went out and called her, and I tendered him the money again, and tried to explain to him that he ought to accept the money, that it was simply a matter of claiming his witness fees and that he was entitled to it, but he positively refused; he said until he saw his lawyer, and that was all.

Q. How did he appear, Mr. Ide; did he appear to be sick and crippled?

A. Well, he walked with a cane; he had a cane in his hand, and I think he used it; he could walk fairly well, he walked out in the hall—he must have walked out in the hall to get to the door and he walked back into the other room and called his wife, and said, “Sit down.” It didn’t appear to me that he was crippled, but I could not tell. If I was testifying to his sickness, I would not want to say anything about that.

Cross-Examination.

Q. (By Mr. MARTIN.) Did he appear to you to be a cripple?

A. He did not appear to me to be a cripple, but I would not want to testify as an expert.

Q. Did you go there for the purpose of examining him? A. No, sir.

Q. You are not a doctor?

A. No, sir, I am not; although I have had considerable experience in it—I probably could make an examination, if I had to.

Q. You did not make any examination?

A. I did not.

Q. And you say he walked with a cane?

A. Yes, sir, he did.

Q. Did he have a cane in each hand?

A. I think he had it in his right hand; I could not swear to that, but I think he had it in his right hand.

Q. Did he use his left hand for the purpose of holding on to any railing or wall, or anything to support him?

A. I didn't notice.

Q. You didn't notice it?

A. He walked into the room—put his hand on the foot of the bed—he called his wife, I suppose he wanted her as a witness, and then sat down.

Q. What did he have on?

A. Well, he was dressed. He had on his clothes.

Q. Did it appear as though he was in a lounging suit or raining suit, or what?

A. I think he was in a suit that an ordinary man would wear in the house; I don't remember whether he

had his coat on or not. I would not swear to that, but I am under the impression he did, but I would not swear to it.

Q. What time of day was it?

A. We left—it was about two o'clock, very near two—I presume it was a minute or two after two, because the two o'clock boat, after we came down the hill, was pulling away from the wharf, we got in there at quarter of two.

Q. You say he used a cane?

A. He had it in his hand, and I think he used it.

Q. Did he walk lame?

A. I did not notice any limp; I wasn't looking for it and I didn't notice.

Q. Did he appear to walk as if he was crippled?

A. Well, a man that is crippled, generally I notice, if he is crippled to any great extent—there might be something the matter, but I didn't notice it and I would not testify that there was not something the matter with him.

Q. Did his face look or indicate that he had been out of doors working?

A. Nothing unusual I noticed about his face.

Q. Nothing unusual? A. No, sir.

Q. Don't you know that he is not able to get up or sit down without some assistance, such as taking hold of the back of a chair and letting himself down with his arms?

A. I did not see him get up out of the chair. He got up and came to me I think, in the front room, as soon as I knocked.

Q. You saw him sit down?

A. I saw him sit down on the edge of the bed.

Q. By taking hold of the end of it?

A. I don't think so; possibly he used his cane; I don't know that I was looking at him when he sat down, but when I came in I was talking with his wife in regard to the witness fees.

Redirect Examination.

Q. (By Mr. JUREY.) You say that you saw him get up and come toward you?

A. No, sir, I didn't see him get up. I say that after I rapped it was just a few seconds until the window curtains parted. I don't know whether he parted them or not, but somebody opened the window curtains—I could not see his face, but then he came to the door afterward, and she was in the kitchen when he called her.

Q. (By Mr. MARTIN.) When did you say you served that subpoena?

A. About two o'clock; it was not very far from two o'clock.

Q. On what day? A. It is dated there.

Q. What day? A. On the 11th day of June.

Q. That is to-day, you served it about two o'clock?

A. About two o'clock.

Q. You knew, as a matter of fact, before you went that *she* was in a condition that would prevent him from coming to court?

A. As a matter of fact, I didn't know anything about the case.

Q. You had that knowledge, didn't you?

A. I did not; I am a perfect stranger—Mr. Stringer, the deputy marshal, handed the writ to me in the office, and I went down to the boat.

Q. You didn't know anything about it?

A. No, sir.

Q. Your office issued the subpoena?

A. Yes, sir, the deputy marshal had the subpoena.

Q. (By Mr. JUREY.) Do you identify that as the original subpoena which you served on Mr. Newman, which you have referred to in your testimony?

A. I do. I served him with it; I don't know whether you would call it an exact copy, but it was an exact—it read exactly like this.

Mr. JUREY.—I offer in evidence this subpoena as Appellant's Exhibit "A."

Mr. MARTIN.—Objected to as irrelevant, immaterial and incompetent.

(Testimony of witness closed.)

NEAL MURPHY, produced as a witness in behalf of the appellant, being first duly sworn, testified as follows:

Q. (By Mr. JUREY.) State your full name.

A. Neal Murphy.

Q. Where do you reside, Mr. Murphy?

A. 215 Madison street, Seattle.

Q. What is your business?

A. Contractor—railroad contractor.

Q. Where were you working during the month of March, 1900?

A. At West Seattle. I was constructing the West Seattle street car line for the Green River Construction Company.

Q. You had a great many men working under you?

A. In three months possibly a couple of hundred.

Q. Did you have a man working for you at West Seattle by the name of Newman? A. Yes, sir.

Q. What name did he give you, what initial?

A. Well, my time-book—I never took down more than one of a man's initials, merely to identify him, and I forget what initials he did give me. I know he gave me his name as H. Newman, only one initial, I believe.

Q. What time did this man, H. Newman, work for you?

A. My time-book is down at the office, but you asked me to look at my time-book and remember the circumstance, and I remember it was he went to work for me on the 13th of March.

Q. Between what dates did he work for you?

A. From the 13th to the 19th, inclusive.

Q. In what capacity did he work?

A. Laborer.

Q. What kind of labor was he performing?

A. Shoveling sand on the grade and running a wheel barrow; anything that he was called on to do, ordinary labor.

Q. During the time that this man Newman was working for you, did you have any conversation with him as to the character of work that he was performing, and did he make any objection to performing any particular kind of work?

Mr. MARTIN.—Objected to unless some connection is shown between the appellee and the person whom they are now trying to bring here under a shadow, and I

move to strike out all the testimony as irrelevant, immaterial, and incompetent, and in no way connected with the appellee in this case.

Mr. JUREY.—We will make the proper connection later on by other witnesses?

A. It don't make any difference to me one way or the other.

Q. During the time that this man Newman was work-in for you, did you have any conversation with him as to the character of work he was performing, and did he make any objection to performing any particular kind of work?

Mr. MARTIN.—We make the same objection, and I insist that if counsel intends to show that the appellee was working for this man that he should identify the man as the appellee, and then go ahead with his other examination, but that is something that the counsel can't do.

(Question repeated.)

A. Yes, sir, he did.

Q. What conversation did you have with him relative to that subject?

A. I had a load of planks shipped over from the Stetson-Post—

Mr. MARTIN.—We make the same objection and insist that if counsel can identify this man with the appellee that he should do so now.

Mr. JUREY.—We will show the identity of this man Newman and the libelant later on. Proceed.

A. I had a load of plank unloaded for the Novelty Mill for the purpose of building culverts, and sent my

men down on the work to get the planks out, and a man named Newman came to me, and he said, "I am not able to go under the planks; they are too heavy, and I am not well"; and I said, "All right, you go back on the work and go on shoveling up."

Q. What time did this man Newman quit your work?

Mr. MARTIN.—We make the same objection and move to strike out the testimony of the witness so far.

A. On the night of the 19th at quitting time he asked me to give him his time, and I said I would give it to him the next morning, the 19th of March, on the evening of March 19th.

Q. Did you have any conversation with him at that time relative to why he was quitting?

A. He told me why he was quitting.

Mr. MARTIN.—We make the same objection to that, as irrelevant, and immaterial.

Q. State what conversation you had.

A. The man was nothing to me any more than any laborer, and he said to me, "Murphy, I am going to quit you this evening and I would like to get my time"; he said, "I have got a suit for damages," \$15,000 he told me, against a company, what company I don't remember, because I didn't pay much attention to it, "And they have sent for me to come to Seattle to-morrow for settlement." And I said, "All right, Newman, I will give you your time in the morning."

Q. What amount did he say the suit was for?

A. \$15,000 he told me.

Q. What kind of a hand did this man Newman make?

A. What do you mean?

Q. Was he able to perform a full day's work?

A. Well, he got right along with the work; I didn't find any objection to his work at all; I thought probably when he said he could not pick the planks up as he was not well enough—I had a lot of men, and I said, "All right, go back on the work." I didn't discharge him when he came to me and asked for his time.

Q. He worked right along with the other men?

A. He worked right along running a wheel barrow and shoveling sand and using an ax to get out the roots.

Q. Where did you next see this man Newman?

A. Well, I tell you right now that I am a consummate ass to have anything to do with this case—I might have got rid of these things—I didn't like to be mixed up in this thing at all.

Mr. MARTIN.—I object to this, as this is simply a put up affair evidently between the witness and the attorney and the detective who is working this dirty business up.

Q. (By Mr. JUREY.) Where did you next see this man Newman? A. I saw him at his house.

Mr. MARTIN.—I would like the record to show the actions of the witness before the court here.

Mr. JUREY.—Yes, and also that the counsel is egging him on for the purpose of putting him out of humor. This is simply a straight question and the record simply shows my question to the witness.

Mr. MARTIN.—Yes, and I propose to show the actions of the witness also.

Q. (By Mr. JUREY.) You saw him at his house, Mr. Murphy? A. Yes, sir, I did.

Q. Where? A. Up there on the hill.

Q. On the hill where? A. West Seattle.

Q. How did you happen to see him at his house?

A. That young man sitting there (pointing) came over one day and asked me—

Q. What young man do you mean?

A. This man sitting here.

Q. What is his name?

A. I don't know his name.

Q. You are referring to Mr. M. D. Harben who has already testified in this case? A. Yes.

Q. Proceed.

A. He asked me if I knew a man named Newman, if there was such a man working for me, and I said I didn't know; and he asked me as a favor if I would ascertain whether such a man was in my employ, and I had my time-book in my pocket, and I said, "Yes, there is an H. Newman working for me." And he asked if I could identify the man if I saw him, and I told him, "Yes, certainly"; and at his request I went up to Newman's house, and Mr. Newman was behind the house breaking a box with a hammer—I saw him behind the house.

Q. Proceed.

A. He was breaking up a small box for kindling wood, I suppose—I don't know—and I went to the side door of the house and knocked at the door, and a lady came out with a baby in her arms, and I asked if I could see Mr. Newman—Mr. Newman had gone around the other side of the building, and as I went to the side door he dropped his hammer and went around the other side of the house, and I asked this lady if I could see Mr. Newman, and she said wait a moment and she would

see; and I stood there on the porch for a minute, or a minute and a half, and she said, "Yes, you can see Mr. Newman"; and then I went into the house and met the gentleman. It was nothing to me.

Q. And he was the same man Newman that did work for you on the grade? A. Yes, sir.

Q. Can you describe more particularly where this man Newman lives?

A. Well, I didn't know where he lived, but I left my work to do this gentleman a favor. He asked me and I went up on the hill and inquired, and I went to a grocery store—

Q. Whom did you inquire for?

A. If they could tell me where Mr. Newman lived, and the man keeping the grocery store said, "I think I can show you his house." And he took me out and walked a block and a half and met a little girl, and he asked her which of two certain houses Mr. Newman lived in, and she showed me the house he lived in, and so I went over there.

Q. Can you describe more particularly where this house is located?

A. Well, it is up on the hill in West Seattle; I don't know the streets. I was very seldom off my work; in fact, I was never up there on the hill more than twice or three times.

Q. Is it a little brown house just back of the old pavilion?

A. Well, I could take you right to the house.

Q. Do you recollect?

A. I think the building is about a three or four room house, it has a porch on the side and a porch in

front of it, and I noticed that some children had taken some chalk and did some drawing or figures on the front of the building. I didn't pay much attention to it. I could go there and find it.

Q. Do you recollect the color of the house?

A. Yes, sir, it was painted kind of dark yellow, I think it was; I am pretty near certain it was.

Q. How far from the old pavilion?

A. I don't know that I could locate the old pavilion, I don't think.

Q. You say it is on the top of the hill in West Seattle?

A. Yes, sir. About two blocks behind Brown's Grocery store, this way.

Q. Which direction, north or south?

A. As you go from the top of the hill down toward the water front.

Q. From Brown's Grocery Store?

A. Yes, sir. I didn't even know Mr. Brown. I went in there as a stranger to him.

Q. You inquired at the grocery store as to the whereabouts of Mr. Newman's house?

A. If he knew a man named Newman and where he lived.

Q. Did you ask for any initials? A. No, sir.

Q. Did he tell you there was more than one Newman in the neighborhood?

A. No, sir; he just came out with me and walked down a block with me and asked a little girl that we met where Mr. Newman's house was, and the little girl pointed it out to me.

Q. I will show you this time check and ask you to examine it and ask you if you ever saw it?

A. Yes, sir, it is one of my time checks that I showed you a great many of them.

Q. I will ask you if that is the time-check which you issued to this man Newman who worked for you on the grade?

A. Yes, sir, my stub-book will show the same thing and also the pay-roll.

Q. This is a certificate?

A. Yes, that is the check I gave to Mr. Newman.

Q. Is that your handwriting, all except the signature of Newman?

A. Yes, sir, that is one of my time-checks.

Q. Did Mr. Newman sign his name on the end of the check in your presence?

A. Yes, sir, every man does.

Q. Mr. Murphy, do you require your men working for you on that work to board at any particular place?

A. Yes, sir, there was a boarding-house over there.

Q. And do you require your men to board at the boarding-house?

A. I don't want to keep two or three boarding-houses, and I pick out one place over there run by Mr. Wells as a hotel, and he agreed to board the men for \$4.50 a week, and that was the best I could do over there.

Q. And you require all your men working for you to board at that place?

A. Yes, sir, Mr. Wells went out and bought a new stove and hired a cook.

Cross-Examination.

Q. (By Mr. MARTIN.) Now, where is this house where you say this man Newman was at which you went to see?

A. The house he was living in with his wife and baby?

Q. Anybody else living in the house?

A. I don't know. I was never there only for about five minutes.

Q. Did you see anybody else there?

A. No, sir.

Q. Which way would you go to go to the house?

A. Well, suppose a man was upon my work where I started from, to go to his house he would just strike across the hill to the main road to Mr. Brown's Grocery Store.

Q. Is Brown's grocery store on the top of the hill?

A. Right slap on the top of the hill.

Q. How far from the pavilion?

A. I don't know where the pavilion is.

Q. How far from the end of the street-car line?

A. There is not any street-car line running.

Q. You know where the track is?

A. I know where the track ends. I guess probably—the track begins down in front of the grocery store.

Q. I asked you how far his store is from the end of the street-car line. A. From which end?

Q. The end up toward the power-house.

A. I don't know. I couldn't say. I never measured it. I would like to say that my work was so located that I had no business up there on the hill.

Q. We don't care about your work at all—how far is Mr. Brown's grocery store from the power-house to the end of the street-car; the old cable-car line in West Seattle? A. I don't know.

Q. You don't know? A. No.

Q. Do you know where the end of the street-car line is? A. The old street-car line?

Q. Yes. A. No, sir, I was never to it.

Q. You know where it is, don't you?

A. I know the general run of the road up the hill.

Q. You know where the power-house was that generated the power for the cable-line?

A. No, sir, I was never at it in my life.

Q. You know where the pavilion is?

A. No, sir, I don't. I don't think I could go to the pavilion.

Q. Didn't you say it was about two blocks from the pavilion, in your direct examination?

A. In this manner I did—I had a general idea of where this old building was, because I tried to rent it for a bunk-house for my men.

Q. Which way did you go from the time you met Mr. Harben to go up to Newman's house, where were you when you met him?

A. I was down in the front of the ferry.

Q. Which way did you go?

A. I went up to my work and looked over my time-book.

Q. Where is your work from the ferry?

A. It is about four hundred yards below the ferry, near the Novelty Mill.

Q. Which way as you passed the hill, to the left or right?

A. If you give me an opportunity to stand up a minute and look out the window I can tell you. The Novelty Mills you mean—to the right of the Novelty Mills?

Q. The Novelty Mills is to the west of the ferry going over? A. Yes, sir.

Q. Then your men were over to the left?

A. Yes, sir.

Q. Then where did you go?

A. I went from there up the hill over the grade and struck across in that direction to Mr. Brown's.

Q. In which direction?

A. Off in that shape, I don't know the points of the compass.

Q. Was Mr. Harben with you? A. No, sir.

Q. Where did he go?

A. He stayed around the ferry. He asked me if I knew where he could find a man by the name of Furst, who had been working for me and lived over there.

Q. Living over where? A. West Seattle.

Q. Whereabouts did he live in West Seattle?

A. I don't know.

Q. What is the man's name? A. Furst.

Q. How do you spell it?

A. Frank Furst. I talked with him Saturday; I met him in town.

Q. He lives over in West Seattle?

A. He lived over there.

Q. And worked there at the time when you say Mr. Newman worked there?

A. Yes, sir, he was working there at the same time.

Q. Now, which way, going from the ferry, would you go to this house which you say you went to?

A. Well, I left the ferry boat and go right up the hill and turn to the right, and when you get on the top of the hill you turn this way, and then Brown's Grocery Store is on the main road.

Q. You go to Brown's Grocery Store, do you?

A. I was there only once in my life.

Q. That was the direct road? A. Yes, sir.

Q. How long have you been over there in West Seattle?

A. I started up to do that work some time about the 15th of March, and quit and wound up my work and came to Seattle with my men last week.

Q. You started in on the 15th of March and quit last week? A. Yes, sir.

Q. Did you board over there?

A. Part of the time, not often. I used to come over here every night.

Q. And during the rest of the time you were over there all the time? A. No, sir, not all the time.

Q. Most of the time?

A. I was over there every day more or less. I had my foreman looking after my work there.

Q. West Seattle is a very small place?

A. Well, it is not a very large place.

Q. Not many houses over there, are there?

A. I don't really know.

Q. You don't know?

A. No, sir. I was never to the top of the hill but once in my life off my work, and that was on this occasion.

Q. This detective Harben was there to see you several times concerning this matter?

A. He has been over there to West Seattle asking me for some information.

Q. Do you know whether or not there was a man put on your work by the name of Newman by this detective?

A. Well, no more so than every other man I had might have been put there by him. I could not say anything about that part of it.

Q. Have you any reason to believe that he did do so?

A. None in the world.

Q. Has he not approached you several times to testify in this case?

A. Well, he said he would like to get my time-book. I got my time-book and I told him I did not want to be dragged into it.

Q. Didn't he have a conversation with you at the boarding-house at one time wherein he wanted you to testify that this Newman the injured man had worked for you? A. He asked me if that was the man.

Q. And didn't you have a talk with him and with the lady that kept the boarding-house wherein he wanted her to testify that he had boarded there? A. No.

Q. Not at all? A. No.

Q. What, if anything, has he offered you or paid you for coming here to testify?

A. My dear sir, not a thing on God's green earth.

Q. Not a cent? A. No, sir.

Q. Not a dollar? A. No, sir.

Q. Do you expect any remuneration from him of any nature or kind?

A. No, sir. I am going up north in six or eight days, and I did my best to keep from being driven into this thing here, and the only reason I came here was—

Q. How did he come to go to you and ask you for your books?

A. I met him. He came over there and I didn't know whom he was or what capacity he was working in, and he spoke to me, spoke to me pleasantly, and I treat every one like a gentleman, which I am sorry to say that you are not.

Q. Never mind, you are testifying in this case.

A. (Continuing.) And he asked me if I had a man named Newman working for me, and I told him that I didn't know, that I had my time-book in my pocket and I would look at it, and I pulled the book out and showed him the name.

Q. What kind of a looking man was the Newman that worked for you?

A. Just the same looking man that he was the last time I saw him, only a good deal whiter.

Q. You can remember all of the three or four hundred men that worked for you?

A. I can remember his case in particular for the reason that he told me he could not carry that lumber up.

Q. You can remember the description of the men that worked for you? A. Yes, sir.

Q. But they come and go every day?

A. They do come and go every day.

Q. And during all this period that you worked there, you can remember the description of each man?

A. No.

Q. You have a recollection of each man that works for you?

A. I meet them on the street by the dozens every day that I go out on the streets of Seattle.

Q. But you have a great many strangers working for you?

A. At the time I was doing this work at no one time did I have more than twenty men on the work.

Q. Did you have other men on the work from West Seattle? A. Yes, sir.

Q. Whom did you have?

A. Antone Nicholle, a fisherman, and Mr. Hogan, a married man who has a family there. Nicholle lived on a scow and Hogan has a wife and daughter living over there somewhere.

Q. Who else?

A. I think that is all the men that I remember of just now.

Q. You mentioned another name a moment ago.

A. I can pick them out on my time-book. My time-book is down at the Green River Construction Company's office.

Q. That is Mr. Leary's office?

A. Yes, sir. There were three men working for me who lived at West Seattle at the time these men were doing the work.

Q. And those are two of them? A. Yes, sir.

Q. Who was the other?

A. The German, I can't recall his name, but I can pick them out on the time-book.

Q. You had a man working there in the month of April by the name of Newman?

A. No, I don't think he worked for me in April—it was in March when I first started up my work.

Q. Was there any one else worked for you by the name of Newman? A. No, sir.

Q. Just the one Newman? A. Just the one.

Q. And during that time you didn't have any other man work for you by the name of Newman than the one that you refer to?

A. I never had but the one man by that name on the work.

Q. You were working there in April, were you?

A. Yes, sir, the time-book shows everything and the name of every man that was on the work.

Q. And it also shows the month? A. Yes, sir.

Q. And the entries in this book are correct, are they?

A. Supposed to be, yes, sir.

Q. Did you ever change any of the entries in this book since?

A. I merely transferred the names of the men from one part of the book to another, because the book would get dirty and I would not have room enough to get in their names, and I made a transfer there a couple of times, I think. Newman's name and other names would appear there more than once, but that was merely because I transferred the names to another sheet.

Q. But they were for the same month?

A. Yes, sir. I can explain it all to you, if you will let me. Mr. Newman has nothing in the world against me, and if you will come with me to Mr. Newman's I will go with you.

Q. We will not only ask that you do that, but demand that you go there to the house.

A. I will certainly go with you this afternoon, if you wish.

Q. And you say that the Mr. Newman which you refer to never worked there except this one time?

A. That is all. From the—the time-book shows the name and the date and the time, and the check will show the number of days he worked.

Q. I believe you stated that he started in somewhere around the 12th.

A. I think it was previous to that time.

Q. That was when he started in?

A. No. I didn't start in until the 13th of March; my time-book will show.

Q. I am asking you from memory?

A. I don't remember just the date, but my time-book will show it.

Q. This time-book runs from December, 1899?

A. It was an old time-book that I used.

Q. It runs back to July, 1899.

A. That was the Camp Leary work.

Q. You are positive there was no man worked for you except this one man Newman? A. No, sir.

Q. What is that name there (showing); isn't that J. Newman? A. That is J. Newman, yes, sir.

Q. Eleven dollars? A. Yes, sir.

Q. The amount due? A. Yes, sir.

Q. For the month of April, 1900?

A. Yes, sir, the same man.

Q. J. Newman? A. Yes, sir.

Q. Eleven dollars? A. That's right.

Q. For the month of April?

A. Yes, sir, he did work for me in April, come to think of it.

Q. He worked in the month of April?

A. Yes, sir.

Q. To the extent of eleven dollars?

A. Yes, sir, and he worked in March.

Q. And that is the same man?

A. The same man.

Q. This book is all in your handwriting?

A. Not all of it.

Q. The months of April and March are?

A. Yes, sir, on the West Seattle work, March, April and May. One of my foremen has another time-book over there that shows Newman's name on it, too, Mr. Cox.

Q. Now, on this page you have "H. Newman" (showing) for the month of March? A. Yes, sir.

Q. Now, you have drawn a line through the "H. Newman" on the page and put it over on the next page "H. Newman"?

A. Yes, sir; because other men came on the work.

Q. You did not finish the page on which H. Newman's name appears first? A. No, sir.

Q. So that you could have continued right on down on that page, could you not?

A. Yes, sir; but there was no particular reason for it.

Q. Then in the month of April you have J. Newman?

A. Yes, sir.

Q. You paid him eleven dollars at that time?

A. Yes, sir, the stub-books will show.

Q. Now, what recollection have you about the same Newman working in the month of April?

A. He is the same man that worked for me.

Q. What recollection have you of any occurrence taking place during the month of April of this same man Newman?

A. Nothing in particular no more than any other man.

Q. This is a full list, is it? A. Yes, sir.

Q. Before you saw this book you had no recollection of Mr. Newman working for you in April at all?

A. I didn't have the book in my possession for a week or so, and I didn't recall every little circumstance that occurred on the work.

Q. What time was it that you went up to Mr. Newman's house with Mr. Harben?

A. I never went there with Mr. Harben.

Q. At his request?

A. I guess it was two weeks ago, or somewhere along there.

Q. And you are sure that is the same Newman that worked there in March and April, which you saw there?

A. Yes, sir.

Q. Do you know whether this is the same Newman that was injured on this vessel, Charles H. Newman?

A. No, sir, I don't know that.

Q. Did you know Mr. Newman at the time he got injured?

A. No, sir, I never saw the man until he asked me for work.

Q. What kind of a looking man was the man Newman that worked for you on the grade?

A. Well, he don't look much different from what he does now.

Q. Give us a description of the man that worked on the grade.

A. I guess he is a man that weighs about a hundred and fifty pounds, or in that neighborhood, and he was not as tall as I am by considerable.

Q. How tall are you?

A. Five foot ten and a half, I think, if I remember just right.

Q. How tall was this Newman which you refer to?

A. I don't think he was much over five feet or five foot two inches, something like that.

Q. Was he a dark man or light man?

A. Light complected man. If I remember right, he had a red mustache. I can't recollect exactly. You might ask me to-morrow if you had a mustache and I would have to stop to recall.

Q. Can you recall what color his eyes are?

A. No, sir. The man would have been black and blue by this time if he had talked to me the same as I have been talked to by you, I think. No, sir, I could not tell you anything of that kind.

Q. What kind of a looking woman was it that came to the door?

A. Well, I am a lover of the ladies, and she is a very nice looking woman, Mr. Martin, and she was very fleshy, stout; she is a foreigner, I think. I don't suppose she was over twenty-three or twenty-four, or something like that.

Q. Now, would you remember her complexion, whether it was dark or light?

A. Well, she was light; a blonde almost, she had a nice fat baby.

Q. Quite blonde, was she?

A. No, sir. She had a very nice white complexion—a clear complexion.

Q. How heavy was she?

A. She was a pretty stout woman; I guess she must have weighed a good deal more than her husband—I could not tell at all unless I had the lady in my arms.

Q. You did not test her weight?

A. No, sir; I might have had the inclination, but I always respect a man's wife. In fact, that is my one great failing in life is the ladies.

Q. Now, you haven't any recollection of any transaction between you and this Mr. Newman during the month of April?

A. Well, I saw Mr. Newman once coming down the hill. I don't know exactly whether it was in March or April, and he looked to me not to be in very good health at the time; he had a big heavy cane with him; I met him down near my boarding-house; he was going—I was sitting on the steps talking with a young lady and he came up the plank walk.

Q. This is the same Newman which you referred to as working with you? A. Yes, sir.

Q. You are just as positive of that as you are of anything else which you testified to?

A. Yes, sir; if I am in error and make any mistake I am sorry; I do not do it intentionally at all.

Q. Now, this book shows that Mr. Newman worked on the 4th, 5th, 7th, 8th, 9th, 10th and 11th days of April?

A. Yes, sir.

Q. And on the 16th day of April also; is that correct?

A. Yes, sir.

Q. And it shows that he started to work in the month of March on the 13th? A. Yes, sir, 12th, I think.

Q. And worked on the 14th, 15th, 16th, 17th and 19th?

A. Yes, sir, inclusive.

Q. In the month of March? A. Yes, sir.

Q. And you say he started in to work first on the bunk-house and helped you to construct that?

A. He helped to build the bunk-house.

Q. He helped to do that?

A. He and two other men. If you notice on that day there was only three went to work on that morning building the bunk-house. Three or four of them—that was the first work we did over there was to build a bunk-house.

Q. Did they leave over there, do you know?

A. I have not seen any of those men for some time. Parke, I had some trouble with him and discharged him.

Q. Where is your time check for the April work of this man Newman?

A. Down at the office. Whenever a man left work I always gave him these and he always took it to the office and got his money on it.

Q. Then he took these time checks and came to the office and got the money on it?

A. I suppose he did; if I gave him a time check that settled my business with the man except to tell him where the office is.

Q. That time check there (showing) is for the month of March? A. Yes, sir.

Q. And he would have a similar one for April?

A. Yes, sir.

Q. Do you know whether he boarded at the boarding-house in April?

A. Yes, sir, all my men had to board down there with the exception of my foreman, Mr. Cox, and this man Antone Nichols; I supposed I was boarding him, but I afterwards found out that he was boarding with an old fisherman named Charlie Mascorine on the float down there.

Redirect Examination.

Mr. JUREY.—We offer in evidence the time check identified by the witness.

Mr. MARTIN.—We object to that as irrelevant, immaterial, incompetent and no connection shown between the appellee and the person named in the time check, and it shows on its face that it is not the appellee but is some man named Newman.

(Time check received in evidence, and marked Appellant's Exhibit "B.")

Q. (By Mr. JUREY.) You say that the man at the house on the top of the hill at West Seattle, at the house that was pointed out to you as Mr. Newman's house, was the same man that worked for you on the grade in March?

A. Yes, sir.

Q. As I understand you this certificate marked "Appellant's Exhibit B" is the certificate which you gave him for the work that he performed in March?

A. Yes, sir, that is my writing in the body of the check.

Q. Less his board?

A. I gave every man two checks, one for his board check; and then the boarding-house master goes to the

office and gets it marked on the check. That is not the boarding-house check either (showing). That check was taken to the office by the boarding-house man and there is another check in the office which shows the amount of money that the paymaster paid for the actual work. I always have to keep out two checks. I make out one check which says we will say "C. H. Newman worked five days; deduction board \$8.55" and then balance due so much; and then I make him sign that check here and then when he takes it to the office they make him sign it again here, and then the check which the boarding-house man gets, I make him do the same thing, and he has to sign it in two places; and the boarding-house boss always keeps these checks, but before giving them to the boarding-house boss, I make Newman sign his, that he has received payment for this amount; because he has taken it out in board.

Q. This Appellant's Exhibit "B" is his check for the board? A. In March.

Q. That goes to the boarding-house man?

A. Yes, sir, and they are all turned into the office by the boarding-house man before he can get his money from the office.

Q. And this is payment for his board?

A. There is another check in the office stating the amount of money received for his labor, less the board.

Q. The boarding-house check, but you did not put his time on it? A. Yes, sir.

Q. Not the check that is intended for the boarding-house keeper, it just shows how much is due him?

A. Yes, sir. And the other check, a fac-simile of that,

shows how many days he worked and the total amount due for labor and the deduction for board.

Q. But the one that is intended for the boarding-house keeper doesn't show how many days he worked?

A. No, sir, but there is another check in the office.

Q. What was the boarding-house keeper's name?

A. Len Wells. It is the only hotel over there.

Q. (By Mr. JUREY.) Mr. Murphy, this certificate marked "Appellant's Exhibit B," then, represents that part of his labor that goes for board?

A. Yes, sir. That is the boarding-house boss' order for his money for the board during the time this man boarded there.

Q. This represents \$8.55 taken out of his labor and charged up to board?

A. Yes, sir, taken out of his labor and charged to board. If you get my stub-books you will see there is always two stubs to every man's work.

Q. Mr. Murphy, do you think you could point out to Mr. Harben or anyone else, if they were sent with you, the house on the top of the hill which you saw this man Newman at?

A. Yes, sir, I could take you to the same house.

Q. You will do so?

A. Yes, sir, I would give a hundred dollars if I was never mixed up with the confounded thing.

Q. You will point out the house to this man Harben?

A. Yes, sir.

Q. (By Mr. MARTIN.) And I will go with you and see if he is the fellow—

A. Yes, I will go with you anytime.

Q. —that worked for you.

A. They might possibly have rung some other man like Newman to work for me.

Q. Well, you would not know the difference?

A. I don't know what kind of jobs you people put up, but such things are not probable.

Q. If a man went to work and gave you the name of H. Newman and about the same sized man as the appellee, the man that was injured, like his description, you would not know anything about it, would you?

A. I don't suppose I would know.

Q. And they may have done that and it might not have been the man Newman that was injured that was working for you at all?

A. That might be the case. I don't know where the man was injured, or how he was injured.

Q. And you never knew Newman until he worked for you?

A. No, sir, I never saw him but twice since.

Q. That is the job that I think they worked on you?

A. I would not be at all surprised.

Q. (By Mr. JUREY.) Mr. Murphy, the man that you saw on top of the hill at the house which was pointed out to you as Newman's house told you that his name was Newman?

A. He told me his name was Newman.

Q. Yes.

A. Well, I went to the house and asked if I could see Mr. Newman, and this lady says, "If you will wait a minute." And she said, "Yes, you can see Mr. Newman"; and so I went into the house.

(Testimony of witness closed.)

Further proceedings adjourned subject to notice.

Seattle, June 12, 1900.

Continuation of proceedings pursuant to adjournment.

Present William Martin, Esq., of proctors for appellee; J. S. Jurey, Esq., of proctors for appellant.

Mr. JUREY.—I desire the record to show that Mr. Newman, the appellee, failed to obey the subpoena served on him yesterday to appear here at 3:30 o'clock, although the session of the court commissioner lasted until five o'clock.

Mr. MARTIN.—I also wish to have the record show that proctor for the appellee is willing to go with the proctor for the appellant over to his house and take any testimony of his that the proctor for the appellant desires. That he is not physically in a condition to come over to Seattle. Also wish the record to show that the deputy marshal went over there shortly prior to the last moment at which he could catch the car to get to this place, for the purpose of embarrassing the man and threatening him with arrest, and other matters of that kind; and he was also informed by the appellee that he was not able to come and could not come.

NEIL MURPHY, recalled on behalf of the appellant, testified as follows:

Q. (Mr. JUREY.) Mr. Murphy, you are the same gentleman, Mr. Neil Murphy, who testified in this case yesterday? A. Yes, sir.

Q. On yesterday I asked you if you were willing to go to West Seattle with myself and someone else and point out the residence or the house in which you say you saw Mr. Newman, the appellee, about three weeks ago?

A. Yes, sir.

Q. Did you go? A. I did.

Q. I will ask you to state to the commissioner what took place?

A. I went over this morning in company with Mr. Martin, Mr. Jurey and this gentleman here (pointing) and went up to Mr. Brown's grocery store. Mr. Brown was the gentleman that I asked some time ago to show me where Mr. Newman lived. Mr. Brown was not at home but I had my bearings from his store, and knew from there where to find Mr. Newman's house. I went down to Mr. Newman's house in company with this gentleman and some of these ladies I think were called by Mr. Martin, and we remained outside for a short time, and then Mr. Martin—

Q. I will ask you if you identified the house?

A. Yes, sir.

Q. As the house where you saw Mr. Newman some two or three weeks ago?

A. I really do not know how long ago, but somewhere about that time. We went into the house and Mr. Newman was lying on the lounge.

Q. Did you recognize Mr. Newman?

A. Yes, sir.

Q. This gentleman with whom you had conversed some two or three weeks ago, and testified on yesterday about it. A. Yes, sir.

Q. Did you identify him as the same Newman who worked on your grade in March?

A. There is hardly a shadow of doubt in my mind as to the man, but of course I am not infallible; but still, to my personal knowledge, I believe and I am firmly satisfied it is the same man who worked for me between the

13th and the 19th of March. Assisted me in building a bunk-house, that is, in putting the bunks into the bunk-house down on the waterfront for my men. I would not want to injure the man in any way—

Mr. MARTIN.—Never mind that.

Q. Mr. Murphy, while you were standing on the outside of the house waiting to see Mr. Newman in the presence of Mr. Harben, Mr. Kelly, Mr. Martin and others, did Mr. Martin make any statement relative to the identification of Mr. Newman, if you remember?

A. You mean in regard to what Mr. Martin said?

Q. Yes.

A. Well, I did not hear all he said. I did not pay particular attention to it.

Q. To bring you to the point: do you recollect one Mr. Goldie?

A. I think this gentleman here came down and Mr. Martin said something to him about someone saying that Mr. Newman had been working on the grade, and I think Mr. Martin said he knew different, that he never worked on that grade or something to that effect; and said something about wanting to get some witnesses to come over to town this afternoon, and he would fix all of us. I think that was the language.

Q. "Fix all of us" for what.

A. Honestly I could not say because I was talking to someone there and that is about all of it that I remember.

Q. Mr. Murphy, I will ask you to look at that time check or certificate?

A. Yes, sir.

Q. Did you issue that?

A. Yes, sir, that is my check.

Q. To whom was that issued?

A. To H. Newman.

Q. The Newman who worked on that grade in March?

A. Yes, sir— Let me see that date—let me see if it is dated in March. (Witness examines paper.) Yes, this is March of this year.

Q. Do you recollect whether the certificate that was presented to you yesterday marked Appellant's Exhibit "B"?

A. You mean the check similar to this?

Q. Yes? A. Yes, sir.

Q. I will ask you if that represents the balance of the wages due Mr. Newman for this work on this grade?

A. Yes, sir.

Q. This is the check here?

A. Yes, sir. This is a boarding check.

Q. Does that represent his labor and the extent of his board? A. It represents his board, \$4.50.

Q. You testified yesterday that the certificate that you put in evidence represented the board. After examining this do you desire to make any correction in that regard?

A. Well, when I pay off a man I make out two checks, one represents the labor and also shows the deduction for board on it, and I give that man that check and he takes it to the office and gets his money, less his board. That check refers merely to the board account and that he signs and it goes to the landlord, and the landlord brings the check over to the Green River Construction Company's paymaster and he settles the board bill.

Q. Then, this certificate represents the board?

A. Yes, sir, this is a board bill for \$4.50.

Q. The other certificate represents what?

A. Labor.

Q. Instead of board as you testified the other day?

A. It should be labor, I did not notice the two checks.

One is a board bill, it states it on the check.

Q. Is this certificate in your handwriting?

A. Yes, sir.

Mr. JUREY.—I offer this certificate in evidence.

Mr. MARTIN.—I object as incompetent, irrelevant and immaterial and tending to cumber the record and for the reason that there has been no connection shown to the appellee in this case whatever.

(Paper received and marked Appellant's Exhibit "C," filed and returned herewith.)

Q. Look at this certificate for labor in April. (Witness examines paper.) Did you issue that certificate?

A. Yes, sir.

Q. What does that represent, Mr. Murphy?

A. That certifies that J. Newman—

Mr. MARTIN.—Never mind what it certifies.

A. (Continuing). It is a check for \$11 for 5 1-2 days' labor at \$2 a day less \$4.

Mr. MARTIN.—I object to the reading of the check. It is the best evidence itself.

Q. State what it is?

A. It is a check for \$6.28 for labor performed.

Q. By whom?

A. By J. Newman on the West Seattle street-car line in West Seattle, April 11th, signed by him.

Q. Was that signed in your presence?

A. Yes, everyone signs these checks in my presence.

Q. You saw John Newman sign that certificate on the end of the check? A. Yes, assuredly.

Q. The other is signed before the paymaster?

A. Before the paymaster in the office.

Q. Who is J. Newman?

A. He was the man who was on my work as my time-book shows during that month. In the month of April my foreman had charge of my work. I was busy, it was during the most part of the month in looking after the work between here and Tacoma, on the Seattle & Tacoma Electric power line, and also engaged—

Mr. MARTIN.—I object as incompetent, irrelevant and immaterial and move to strike the answer as cumbering the record.

Q. You were also engaged in looking after work for the West Seattle Land & Improvement Company?

A. Yes, and my foreman had charge of my work during that month. He hired and discharged the men during that time. Sometimes he would send men to me with a slip of paper with their names on it.

Q. You mean to say that you did not have strict personal supervision of that work?

A. No, not after about the end of March until about the winding up of my work.

Q. Did more than one man named Newman work for you on the grade, to the best of your knowledge?

A. No, sir, not to my knowledge.

Mr. MARTIN.—That was gone over yesterday, and he testified before that this was the same Newman that

worked both in April and in March, he swore to it positively.

Q. Now, to the best of your knowledge—

Mr. MARTIN.—I object to the form of the question and object to an answer. We want to know whether he knows or whether he does not know. That is what we went over for and that is why I demand that the witness confront the appellee, to state whether or not he was the man that worked, and he said that he could tell, and I want to know whether he says he is the same man or not.

Q. Mr. Murphy; to the best of your knowledge—

Mr. MARTIN.—We object to the form of the question, as an equivocation of the proposition, and an attempt to evade answering the true question.

Q. The man Newman named in this certificate who worked on that grade in April was the same man who worked on that grade in April, the same man who worked on that grade in March by the name of H. Newman?

A. I am satisfied beyond doubt that he is the same man.

Q. The same man that you recognized to-day over at West Seattle as Charles H. Newman?

A. The man that I saw in that house this morning that I spoke to was undoubtedly the man who worked—

Q. In March? A. In March, yes.

Q. And in April?

A. In April I would not swear to that positively because, as I tell you, my foreman had charge of my work in April, but I never knew but the one Newman on that work.

Mr. JUREY.—I offer this certificate in evidence.

Mr. MARTIN.—We object as incompetent, irrelevant and immaterial.

(Paper received and marked Appellant's Exhibit "D," filed and returned herewith.)

Q. You may look at this certificate, Mr. Murphy, did you issue that certificate? A. Yes, sir.

Q. What does it represent?

A. J. Newman was in my employ at West Seattle 5½ days in the month of April.

Q. This is a time check for his labor during the month?

A. For his labor, with his board deducted, \$4.62, also signed by Wells, the hotel manager over there.

Q. In what capacity did this man Newman work?

A. As a laborer.

Q. What is the character of labor that he performed?

A. Running a wheelbarrow and shoveling sand and using an ax.

Q. I will ask you to look at the signature on the end of that certificate? A. I see it.

Q. Was that signature made in your presence?

A. Yes, sir.

Mr. JUREY.—We offer this time check in evidence for the work in April.

Mr. MARTIN.—I object as incompetent, irrelevant and immaterial.

(Paper received, marked Appellant's Exhibit "E," filed and returned herewith.)

Q. All these certificates are in your handwriting?

A. Yes, sir. All of them. No man was on the work that got a check without my being there.

Cross-Examination.

Q. Mr. MARTIN.) You say you saw Mr. Newman sign that check?

A. Yes, sir; every man whose name is on these checks are signed—

Q. On this one marked exhibit "B"?

A. Yes, sir, that is my check all right.

Q. Did you see Charles H. Newman, the gentleman who I introduced you to in his house at West Seattle to-day sign that name on that check?

A. Yes, sir; no other man could possibly have signed it.

Q. You saw him sign his name on that check?

A. I saw him sign his name to that check.

Q. Exhibit "D"? A. Yes, sir.

Q. Where were you when he signed that?

A. On my work.

Q. Whereabouts?

A. Out on that hill; I do not know the particular spot.

Q. When?

A. On the grade where the men were employed.

Q. You say he also signed where he received payment, do you? A. Yes, sir.

Q. Both of these signatures?

A. He signed both of these signatures.

Q. To exhibit "D"? A. Yes, sir.

Q. You are positive about that?

A. Certainly I am.

Q. And the same man you saw there to-day, Charles H. Newman?

A. Yes, sir, to the best of my knowledge and belief.

Q. You say you saw him sign that check?

A. Yes, sir.

Q. Was it or was it not him?

A. It was him.

Q. That is the way to answer. And you swear to that on your oath? A. Yes, sir, I do.

Q. You saw him sign, did you, exhibit "E"?

A. That check was signed by Mr. Newman in the presence of Mr. Wells and myself.

Q. By this same Charles H. Newman?

A. Yes, sir, at the hotel.

Q. Whereabouts in the hotel?

A. At the counter where Mr. Wells keeps the books upon and the ink.

Q. Did you get this certificate there?

A. Yes, sir, Mr. Wells signed that himself at the hotel.

Q. Where did you get this blank that this was made on, did you have it at the hotel there?

A. No, sir, I carry a book in my pocket all the time in connection with the time-book, my check-book.

Q. Charles H. Newman signed that in the presence of Mr. Wells?

A. Yes, sir, he went down to see what the board bill was; Mr. Wells would recognize his own signature.

Q. This is Appellant's Exhibit "E." These were made out on the dates they purport to be?

A. Yes, sir, the dates they call for. Just exactly as they read there.

Q. What business have you been engaged in?

A. Mining and railroading.

Q. What else? A. Nothing.

Q. What occupation have you followed?

A. Mining and railroading for the last twenty years.

Q. Mining and railroading?

A. I have had one or two government positions.

Q. Have you acted in the capacity of deputy United States marshal at Skagway? A. Yes, sir.

Q. For how long? A. Oh, several months.

Q. Did you ever act in the capacity of a detective?

A. No, sir, I never did.

Q. At any time? A. No, sir, never.

Q. Did you act in the capacity of deputy sheriff?

A. Yes, sir.

Q. And warden? A. Warden.

Q. You have? A. Yes.

Q. At the penitentiary? A. I did.

Q. You have followed that kind of work, have you, for some time? A. Yes.

Q. For how many years?

A. Well, I was deputy sheriff over in Idaho for possibly six or seven months under a friend of mine who was sheriff, and I was deputy warden of the penitentiary at Yuma, Arizona, for possibly nine months. Mr. Bean was our warden, and I was deputy United States marshal under Commissioner Smith at Skagway.

Q. Up at Skagway?

A. At Skagway during the trouble up there.

Q. And this is the kind of work that you have been engaged in lately?

A. Partly. I am not ashamed of it. It took considerable influence—a man had to have a good deal of backing to obtain these positions.

Q. Whereabouts were these bunks that you speak of that Newman first started to work on?

A. Almost directly opposite where you had your lunch to-day.

Q. That would be to the right of the West Seattle landing as you go over there?

A. Yes, sir, above it that way.

Q. Whereabouts?

A. Right above that big cannery, big fish cannery, almost directly opposite where you ate dinner.

Q. Over beyond the Oceanic Packing Company's warehouse? A. Yes, sir, right above the house.

Q. The Oceanic Packing Company?

A. Yes, sir.

Q. Whereabouts was the house situated with reference to this?

A. Right a little above, probably fifty feet.

Q. Newman was one of the men at work putting these bunks in? A. Yes, sir.

Q. The first time that you started in to do the work?

A. Yes, sir.

Q. This same man Newman that you speak of now?

A. Yes, sir.

Q. Charles H. Newman, the same gentleman you saw to-day? A. Yes, sir.

Q. Then you went over the grade, did you?

A. The next morning.

Q. And he was over there, was he?

A. Yes, sir.

Q. Where did you first meet Newman?

A. I met him over at West Seattle. He came applying for work.

Q. Now, when did he come to apply for work to you?

A. On the morning I started to build the bunk-house. I took two men from Seattle to West Seattle, and he came down this morning when we started in.

Q. You never saw him before? A. No, sir.

Q. He did not know you and you did not know him?

A. I do not think that he did.

Q. Where were you when he first spoke to you?

A. The two men were carrying lumber that I had purchased from the superintendent of the Robinson Raft Company, they were hauling lumber up from the company's yard to the bunk-house.

Q. He wanted a job to help pack lumber?

A. He wanted employment.

Q. In other words he was standing there waiting when you got over there that morning to go to work for you?

A. I do not know that he was standing there waiting.

Q. What time did you go to work?

A. We worked eight hours that day.

Q. What time did you go to work?

A. We worked ten hours a day, I think it was.

Q. I want to know what time you went to work.

A. I could not tell to the minute. My time-book shows my men put in eight hours that day. My men put in eight hours that day, you have got the time-book in your pocket.

Q. What day did you say you started in?

A. Either the 12th or the 13th. You have my time-book, Mr. Martin, in your pocket, have you not?

Q. You say these men worked right along on your grade, this same Newman, you say, was there?

A. Yes, sir.

Q. Wheeling a wheelbarrow?

A. Yes, sir, wheeling a wheelbarrow and shoveling sand.

Q. What would he be hauling in that wheelbarrow?

A. Sand.

Q. Loaded full would it be?

A. Yes, sir.

Q. How heavy would that be?

A. It would depend altogether on how he loaded it, I do not weigh the wheelbarrows.

Q. How much would it weigh?

A. 125 or 120 pounds.

Q. Quite heavy?

A. No, A wheelbarrow, I do not think that I ever ran one or I would know more about it.

Q. He was shoveling right along?

A. Yes, sir.

Q. Using an ax and cutting and grubbing?

A. Yes, sir, some roots.

Q. How much did you pay him a day?

A. \$2.

Q. How much per day did he pay for board out of that? A. \$4.50 a week.

Q. You say that he boarded down at Wells' during the time that he was working for you?

A. During the months of March and April.

Q. Did he have a bed there, a bunk?

A. I suppose he slept in the bunk-house, that I do not know. I did not keep so close track of the men at all.

Q. You had a bunk-house for him?

A. I had a bunk-house for all the men.

Q. They were all supposed to sleep there?

A. There were some of my men did not sleep there.

Mr. Hogan worked for me in March and he did not sleep there. He boarded at home.

Q. But these you charged up board to did board there? A. Yes, sir.

Q. And slept there?

A. Yes, sir, supposed to.

Redirect Examination.

Q. (Mr. JUREY.) Mr. Murphy, do I understand you to say that one of these exhibits "C" or "D" that you saw Newman sign under the words "Received payment"?

A. All these signatures were made in my presence. I required the men to sign every check.

Q. I mean under the words "Received payment"?

A. Yes, that was signed at Mr. Wells' boarding-house.

Mr. MARTIN.—That is exhibit "D," is it not?

Mr. JUREY.—I think so.

Mr. MARTIN.—I object to this; it has all been gone ing his own witness and coaching him in any such manner.

Q. Do you mean to say that you saw him sign both of these signatures?

A. Certainly, all of these signatures attached to all of these checks.

Q. You mean both signatures on each check?

A. Yes, sir, they were all signed in my presence.

Q. You have a great many men working for you on that grade, do you not?

A. Yes, sir, I have a good many.

Mr. MARTIN.—I object to this; it has all been gone over before.

Q. Do you always get the correct name?

A. Well, Mr. Butler can explain that probably to the satisfaction of Mr. Martin, that I could not always.

Q. Have you any explanation of that; if you have you may state it.

A. I will say this; in several cases we did not always get the first name right or the initials right, sometimes would get his name wrong, for instance my pay-roll and my time checks in the office will show the case of Mr. Coleman, whose name was Corrigan.

Mr. MARTIN.—I object as incompetent, irrelevant, and immaterial.

A. (Continuing.) I got his name wrong and he signed the check and I did not want to tear up the time check and I got him to sign the same name that I had originally written in the time check. Any man on public work will tell you these things are of common occurrence. Sometimes we do not get the initials right, and sometimes we do not get the spelling of the name right.

Q. Was it your custom where you got the man's name wrong or the initials wrong, to make him sign the time-check or name which you had on your books?

A. Certainly; if I had a man named John Jones and he signed Tom Jones, the paymaster would have to have that signature.

Q. Mr. Murphy, did you have any difficulty this morn-

ing in pointing out the house that you saw Newman in?

A. Not a particle, no, sir.

Q. Did you receive any assistance or suggestions from anybody? A. No, sir.

Q. The man that you saw at the house to-day on the hill at West Seattle, and the man that Mr. Martin introduced to you was the Newman that worked for you on the grade?

A. Undoubtedly he was the man that was on the grade working in March.

(Testimony of witness closed.)

Mr. JUREY.—I desire to have the record show and to give Mr. Martin notice here in open court that if he desires the testimony of Mr. Murphy, I will waive all formalities and permit him to take it at any time, and let him appear at any time, upon one hour's notice to take his testimony if he desires. I desire further, to have the record show that I give this notice to proctor for the appellee for the reason that Mr. Murphy is liable to go away at any time.

At this time further proceedings were adjourned until June 13, 1900, at 8 o'clock P. M.

Wednesday, June 13, 1900, 8 P. M.

Proceedings continued pursuant to adjournment.

Present: William Martin, Esq., proctor for appellee; John S. Jurey, Esq., proctor for appellants.

JAMES B. EAGLESON, produced as a witness in behalf of appellant, being first duly sworn, testified as follows:

Q. (By Mr. JUREY.) State your full name.

A. James B. Eagleson.

Q. Where do you reside? A. Seattle.

Q. How long have you lived in Seattle?

A. Twelve years and a half.

Q. What is your profession, Doctor?

A. Physician and Surgeon.

Q. Duly and regularly licensed physician in the active practice of your profession? A. Yes, sir.

Q. How many years have you been practising your profession? A. Fifteen years.

Q. Do you recall, Doctor, sometime during the fall, and the latter part of the fall of 1899 that Mr. Metcalfe, one of the proctors for the claimant in this case of Newman against the steamship "Homer" spoke to you about a surgical examination of the libelant in this case, Charles H. Newman?

A. Yes, sir. He spoke to Dr. Ford and asked him if he would see the case and examine the case—he didn't speak to me about it at all, until sometimes afterward I met him one day and asked him—

Q. Was there any part of the testimony in this case, particularly the testimony concerning who examined or treated the libelant, shown to you?

A. Yes, sir; they gave us to read over the testimony given by Dr. Wotherspoon and Dr. Miller, I believe it was.

Q. For what purpose was it given to you?

Mr. MARTIN.—Objected to as irrelevant, immaterial, and incompetent and move to strike it all out.

A. My understanding was that we were just to read it over and get an idea of what the testimony was in the case, so that we would get some idea of the case.

Q. At the time of the examination you would be called upon to make?

A. Yes, sir. The idea was that we were to see the case and make a thorough examination and give our opinion of it.

Q. Did you ever, at any time, give any of the proctors for the claimant or anyone representing the ship any assurance that you could or would contradict the testimony of the surgeon who testified on behalf of the libellant?

A. It would be impossible for me to do that until I saw the case and examined it. I would not know whether I could do that or not.

Q. As a matter of fact, you gave no such assurance?

A. No, sir. It would be impossible to do it until I examined the case.

Mr. MARTIN.—I move to strike out all the testimony of this witness as irrelevant, immaterial, and incompetent.

(Testimony of witness closed.)

ROLLIN V. ANKENY, produced as a witness in behalf of appellant, being first duly sworn, testified as follows:

Q. (By Mr. JUREY.) State your full name?

A. Rollin V. Ankeny.

Q. Where do you reside? A. Seattle.

Q. How long have you lived in Seattle?

A. Twelve years.

Q. What is your business? A. Banking.

Q. What bank are you connected with?

A. The Puget Sound National Bank.

Q. How long have you been engaged in the banking business? A. About eighteen years.

Q. How long have you been connected with the Puget Sound National Bank? A. Twelve years.

Q. What position do you hold in the Puget Sound National Bank? A. Cashier.

Q. How long have you held that position, Mr. Ankeny? A. About five years.

Q. Are you an expert in handwriting, in examining and determining the genuineness of signatures and handwriting?

A. Well, I have had a good deal of experience incidental to my business.

Q. In connection with your business you have a good deal to do with the examination of different handwritings and signatures, comparing them, have you?

A. I have.

Q. And determining their genuineness?

A. Yes, sir.

Q. Mr. Ankeny, are you able, from the experience you have had in your business, to examine a signature or handwriting that is known or admitted to be genuine, and by comparison of that with other signatures and handwriting to determine whether the latter are genuine or forgeries? A. I can give my opinion.

Q. You are daily engaged in such business, are you not, that is a part of your daily duties?

A. Whenever the occasion arises, yes, sir.

Q. Mr. Ankeny, I will call your attention to the original record in the case of Charles H. Newman against the steamship "Homer," in the United States

District Court for the District of Washington, Northern Division, No. 1468, and particularly to the signature "C. H. Newman" to the libel, and to the signature "U. H. Newman" to the verification of the libel, and to the signature "C. H. Newman" to the libelant's bond or stipulation for costs, and to the signature "C. H. Newman" to the amendment to the libel, and to the signature "C. H. Newman" to the verification to the amendment to the libel, and to the signature "C. H. Newman" to the verification of the replication, and to the signature "Charles H. Newman" to the verification to reply to amendment to amended answer, which are the established and admitted signatures of C. H. Newman, the libelant and appellee in this case; and I will also call your attention to Appellant's Exhibits "B," "D," and "E," and I will ask you to compare the signatures "H. Newman" on the end of exhibit "B," and under the words "Received payment" on exhibit "B," with the signatures in the record which I have called your attention to; and I will ask you whether or not you can determine whether the signature to the exhibit is the same handwriting and written by the same person as the signatures in the record.

A. I would call that the same writing.

Q. The question is could you determine from that examination? A. What do you mean?

Q. The question is whether from the examination of those original signatures and the time checks which you hold in your hand whether you can determine whether the signature "H. Newman" to the certificate is the same signature and handwriting as the signature "C. H. Newman" to the record?

A. If I understand what you want to know, is my opinion as to either of these.

Q. From the examination you have made, can you give your opinion?

A. Yes, sir, I can give my opinion.

Q. What is your opinion?

A. I consider it the same writing, the same person wrote them both.

Q. The signature "H. Newman" to the certificate which you hold, exhibit "B," you say is the same handwriting as the signature "Charles H. Newman" to the reply to the amendment to amended answer in the record?

A. Yes, sir—yes, I am satisfied as to that.

Q. Now, I will ask you to look at Appellant's Exhibit "D," which I called your attention to, and ask you if the signature "John Newman" is the same signature and handwriting as the signature "C. H. Newman" and "Charles H. Newman" in the record?

A. Yes, sir, I consider them also the same.

Q. The same signature and the same writing?

A. Yes, sir.

Q. And is the signature "John Newman" to exhibit "D" both at the end and under "Received payment" the same signature and handwriting as the signature "H. Newman" on Appellant's Exhibit "B"?

A. Yes, sir, it is all the same.

Q. Mr. Ankeny, I will call your attention to Appellant's Exhibit "E," and ask you if the signature "John Newman" on the end of the certificate is the same signature and the same handwriting as the signature

“Charles H. Newman” to the documents in the record to which I have called your attention? A. Yes, sir.

Q. Now, I will ask you if the signature “John Newman” to the end of Appellant’s Exhibit “E” is the same signature and handwriting as the signature “H. Newman” to the end and under “Received payment” on Appellant’s Exhibit “B.”

A. Just the same.

Q. Mr. Ankeny, to be specific, I will ask you if the signature “H. Newman” on Appellant’s Exhibit “B” and the signature “John Newman” on Appellant’s Exhibit “D” and the signature “John Newman” on Appellant’s Exhibit “E” is the same signature and handwriting and written by the same person as the signature “Charles H. Newman” to the reply to amendment to amended answer in the record before you? A. Yes, sir.

Cross-Examination.

Q. (By Mr. MARTIN.) What makes you think that the name under “Received payment” on exhibit “D” is the same handwriting as the name “C. H. Newman” on the libel in this case?

A. Because there is a great similarity.

Q. What similarity is there?

A. Right there (showing) it is identical, the “m” and “n” in those two cases.

Q. How would you say that the pen was held in each of those cases, in the case of the libel would you say that the position of the man was sitting, and as to the manner in which he held his pen?

A. Well, I could not say as to what position he was in when he wrote.

Q. Could you tell?

A. The appearance here is that the pen was a sharp pointed, and I would say that the pen there was rather an old pen (referring to the time check).

Q. Are they spelled the same?

A. They appear to be.

Q. How would you say that the word "Newman" under "Received payment" on exhibit "D" is spelled—spell it out as it is on exhibit "D."

A. He has kind of run his "n"—and the John and the Newman are practically one letter—I can go backwards, "n-a-m-w-e—" and that is practically one letter.

Q. Is that more of an "r" there?

A. Well, you see he has brought it up over the "w" and he was nervous, and he has sort of run it together—which shows that either he worked hard or was up late at nights, or something of that sort.

Q. In the pleadings here it looks as though he was very nervous, does it?

A. Those are a little better—there, for instance (showing); that is better here and further over you get (showing)—that is very good too, but he wrote that in an easier position evidently; over here he seemed to be quite nervous.

Q. He seemed to be quite nervous when he signed that paper? A. Yes, sir.

Q. What paper is that?

A. The amendment to the libel and also the verification.

Q. Does not the signature under "Received payment" indicate more strength and power in writing than the signature to the libel or amended libel?

A. Well, I could not answer that question.

Q. Does not the signature to the libel and amended libel and the pleadings here all the way through show a man in a rather weak, nervous condition, and doesn't it indicate that?

A. It indicates that the man may be perfectly well but very nervous sometimes, and this man evidently is not accustomed to writing, or else he is very nervous, but I would say that he is not accustomed to writing.

Q. If that man, in his ordinary condition, had a very good hand-write and that the way it appears there is because of an injury or his nervousness that causes it, what would you say that this here writing is the same (showing check to witness)?

A. Well, I could hardly judge of a man's condition by his handwriting.

Q. You say it indicated that?

A. It shows that he was nervous or incapacitated in some way.

Q. You say it indicates nervousness?

A. Yes, sir, that is as far as I would go in an opinion.

Q. Does not exhibit "D" "John Newman" show strength and power?

A. He may have had a more competent position when he wrote this—he does not appear to be in as nervous condition here as when he wrote that.

Q. Does not exhibit "D" "John Newman" show strength and power?

A. It shows poor handwriting.

Q. It does not indicate nervousness?

A. It does not appear to be nervous—the lines are more regular.

Q. That handwriting you made out to be the handwriting of a laborer, would you not, who was not skilled in handwriting?

A. I can't judge of a man's vocation by his handwriting.

Q. Now, if I were to tell you, Mr. Ankeny, that all those signatures which appear in those pleadings were written when the man was lying on his face and had to get support under his breast in order to get his arm sufficiently from the bed in order to write these, what would you say about that signature compared with this exhibit "D," where a man must have been in a standing position, a laborer who was performing work, what would you say about those signatures under those circumstances?

A. What is your question?

(Question repeated.)

A. I would simply say that perhaps the nervousness in this case here was justified, but I would not give that as an opinion unless I knew the cause of the nervousness. Very often I can't write as good myself one day as another.

Q. Would it not make a difference in your opinion as to who wrote those names, whether the same person or not?

A. No, sir; my opinion is given.

Q. Would those circumstances have any effect upon your opinion and the formation of your opinion?

A. They would not have any effect upon my opinion as to the person that made those signatures.

Q. You think that was the same handwriting, do you? A. All the way through.

Q. Is the "N" the same on the word "Newman" in Appellant's Exhibit "B" as appears in the word "Newman" on the libel—the capital "N"?

A. No, sir; it is different.

Q. A different "N"? A. Yes, sir.

Q. Made altogether different? A. Yes, sir.

Q. In the name in the libel the word "H" is attached to the word "N" without withdrawing the pen?

A. Yes, sir.

Q. Is it so in exhibit "B"? A. It is not.

Q. Is not the word "Newman" on exhibit "B" spelled "N-e-u" instead of "N-e-w"? A. That is "N-e-w."

Q. What makes you think that is intended to be a "w"—there is nothing to indicate it, is there?

A. From there up he stopped; instead of going over he went up.

Q. The paper is a little rough at that point, and a little softer?

A. Well, it is wrinkled there not a little.

Q. I will ask you if the signature "Newman" appearing on these exhibits does not show poor penmanship simply? A. It shows poor penmanship.

Q. I will ask you if the signatures to all the pleadings do not show fair penmanship, with nervousness?

A. The same character of penmanship, except it appears that he had a terribly pointed pen.

(Question repeated.)

A. I would not call that fair penmanship. I would call it poor penmanship.

Q. Do you think a man standing up in the position at a counter, where he would have an opportunity of signing these checks, that his signature would be the same—take the same man, for instance, as a man lying down on his face in a crippled condition, and not able to turn around?

A. The general characteristics of his signature would be the same—the similarity—a man most always writes a little different—it is never exactly the same.

Q. But you don't think it would make any difference?

A. Not as to the general characteristics of his signatures.

Q. When were you shown those checks first?

A. This morning.

Redirect Examination.

Q. (By Mr. JUREY.) Mr. Ankeny, as I understand you, the signatures "John Newman" and "H. Newman" to the Appellant's Exhibit "B," "D," and "E" are the same handwriting and the same signatures and written by the same person as all of the signatures to the documents in the record which I have shown you?

A. Yes, sir.

(Testimony of witness closed.)

CHARLES B. FORD, called as a witness in behalf of appellant, being first duly sworn, testified as follows:

Q. (By Mr. JUREY.) State your name.

A. Charles B. Ford.

Q. Where do you reside?

A. Seattle, Washington.

Q. How long have you lived in Seattle?

A. Since September, 1893. I was out here in 1893 first, but this last time I have been here since September 1, 1896.

Q. What is your profession?

A. Physician and surgeon.

Q. You are in the active practice of your profession in this city? A. I am.

Q. How long have you been so engaged in Seattle?

A. In Seattle since January, 1897.

Q. Were you practicing elsewhere previous to that?

A. In Brooklyn, New York, in the hospital in Brooklyn, and also in the hospital in New York City.

Q. I will ask you, Doctor, if you recall, during the latter part of the fall of 1899, Mr. Metcalfe, of proctors for the appellant in this case, Charles Newman, appellee, against the steamship "Homer," appellant, speaking to you about conducting a surgical examination of the appellee, Charles H. Newman? A. I do, yes, sir.

Q. Will you kindly state your recollection of the conversation you had with Mr. Metcalfe?

Mr. MARTIN.—Objected to as irrelevant, immaterial, incompetent, hearsay, and I move to strike out all this testimony, and also the testimony of Dr. Eagleson, on the same grounds.

A. Gen. Metcalfe brought the papers up to that contained the examination of Drs. Miller and Wotherspoon in regard to Mr. Newman's condition, and requested me to read them, and wanted to know, if, in my opinion, a surgical examination, or an examination of Mr. Newman would throw any light upon his case, and I told him I thought it would.

Q. Doctor, did you ever assure Mr. Metcalfe, or anyone else connected with this case, that you could contradict the testimony of Drs. Miller and Wotherspoon?

A. No.

Cross-Examination.

Q. (By Mr. MARTIN.) You never said anything which would lead them to believe that you would, did you, to him?

A. Well, there are some parts of that testimony—do you mean to reverse the whole decision?

A. No. Just answer my question. Did you say that to Gen. Metcalfe—did you ever, doctor, say anything to Mr. Metcalfe which would lead him to believe that you would contradict that testimony? A. No.

Q. Or to any way assure him that you would?

A. No.

Q. In case a medical examination was made?

A. No.

Q. Or to lead him to believe so in any way?

A. No.

Q. How many times did he speak to you about it?

A. Well, that would be impossible for me to answer. He brought the papers up there.

Q. You mean by the papers the testimony?

A. Yes, sir. And once or twice on the street he asked me if I had read it over; but I think I had one talk with Gen. Metcalfe in his office; one that I remember, and that is the only one that I am positive about, but I think I spoke to him on the street—he asked me—

Q. How many times did you say you had spoken to him concerning the matter?

A. Somewhere between one and ten.

(Testimony of witness closed.)

WALTER E. BUTLER, called as a witness in behalf of appellants, being first duly sworn, testified as follows:

Q. (By Mr. JUREY.) State your full name.

A. Walter E. Butler.

Q. Where do you reside, Mr. Butler?

A. Seattle.

Q. Are you connected with the Green River Construction Company? A. Yes, sir.

Q. In what capacity?

A. Auditor and treasurer.

Q. Do you know one Murphy? A. Yes, sir.

Q. Did your company have any business with Mr. Murphy relative to West Seattle?

A. Yes, sir, we had a contract with him.

Q. For doing what? A. Grading.

Q. Grading at West Seattle?

A. Grading at West Seattle.

Q. For what purpose?

A. Grading for the purpose of constructing a street car line.

Q. Are you familiar with the business transactions between your company and Mr. Murphy relative to that contract? A. Yes, sir.

Q. Were his men, working for him on that grade under that contract, paid through you as auditor of the company?

A. Paid through me as treasurer.

Q. Mr. Butler, I will ask you to look at Appellant's Exhibit "B," Appellant's Exhibits "C," "D," and "E," and state what they are, if you know.

A. They are time checks issued by Neal Murphy, certified to the amount due his men for work performed by them on his contracts with us at West Seattle, and one of them here—two of them are certified to the amount of board deducted from those men.

Q. As I understand you those certificates or time checks represent work done for Mr. Murphy under his contract, his grading contract with your company?

A. Yes, sir.

Q. And are certificates for labor performed for him under that contract?

A. Yes, sir, by the men named thereon.

Q. I will ask you if these time checks were paid by your company?

A. Yes, sir, they were all paid.

Q. Mr. Butler, I will call your attention to the fact that in two of these time checks the laborer is designated as H. Newman and in two of them as J. Newman, and I will ask you if it ever, or often occurs in such time checks that the initial of the laborer gets mixed or is incorrectly put down?

A. Not often, but sometimes it does.

Q. Has such a thing occurred, in your recollection, in Mr. Murphy's transaction and work under his contract?

A. I cannot recall to mind any specific case in Mr. Murphy's contract.

Q. In such matters where the initial—where the wrong initial is given or used, I will ask you if it is customary to perpetuate the error by requiring the man to sign his check as made out?

A. If a man calls my attention to the fact that his

initials are wrong, or his first name is wrong, I have him sign his own name to it, irrespective of what the time check calls for. If I don't know what the man's name is and it is not called to my attention about it I pay no more attention to it than to see that he signs it as the check is made out.

Cross-Examination.

Q. (By Mr. MARTIN.) Did you pay these checks, Mr. Butler?

A. Yes, sir, I paid them on behalf of the company.

Q. And when exhibit "D" was presented to you for payment where was it presented to you for payment?

A. It was presented to me for payment in the office of the company.

Q. Did the party sign that at the time you paid him?

A. He signed it in my presence; he signed the receipt in my presence—this on the end was already signed so that I could identify the man.

Q. But the name "Newman" under the words "Received payment" on exhibit "D" was signed in your presence?

A. Yes, sir.

Q. In your presence? A. Yes, sir.

Q. Do you remember the man that signed that?

A. I don't.

Q. You could not identify him?

A. I could not.

Q. Is that true of Appellant's Exhibit "B"?

A. No, sir, this is for board, if I am not mistaken. This exhibit "D" is for the man's time that he was paid, \$6.38—that was one of the first or second checks that

were sent in that were incorrectly made out, but I paid it.

Q. And the man received payment on exhibit "B" in your office in your presence? A. Yes, sir.

Q. You don't remember what kind of a looking man he was, Mr. Butler?

A. No, sir; I have not the least idea. There are a couple of hundred of them in every month and I can't remember.

Q. These have been in your possession since the date mentioned on them?

A. Until a few days ago, when I gave them to Mr. Jurey.

Q. Could you say the date on which you paid this check marked exhibit "D"?

A. I have no other way than the date on the check, April 11.

Q. Would not the books in your office show the date at which you paid it? A. No, sir.

Q. How did you pay it, money or a check?

A. Cash, coin.

Q. And you have no way of determining from the books in the office when you paid it? A. No, sir.

Q. Is there no entry there?

A. I would make the entry on the books and carry the checks as cash on hand until the pay-roll is turned in at the end of the month and then write it off—I simply keep a memorandum of so many checks in the man's name and file the time checks and carry them up until the payroll is made out and then the total amount is written off.

Redirect Examination.

Q. (By Mr. JUREY.) Mr. Butler, these laborers' time checks for board, were they signed before they came to your office, the receipt signed before they came to your office?

A. No, sir; they were receipted by D. Murphy as the manager of the West Seattle Hotel, in my presence, and I wrote in the word here "payment on board."

Q. That is on exhibit "C"?

A. Yes, sir. This one "E" was paid to Mr. Wells, and I paid the men where I put a check opposite it, \$4.62. that amount paid under the total.

Q. Was that receipted before it came to your office?

A. No, sir; it was receipted in my presence. Newman's name was written across the end before it came to me.

Q. In exhibit "D" was that receipted by Newman before it came to your office?

A. No; that was signed in my presence, and I paid the \$6.38 on it.

Q. Do those time checks ever come to your office receipted in advance?

A. Sometimes; I would not say that Murphy's have, but time checks do come receipted in advance.

Q. You would not refuse to pay one because it was receipted in advance if you were satisfied of the genuineness of the signature?

A. I would give them a piece of paper and have them write their name on it and compare it—that is my custom.

Q. (By Mr. JUREY.) Was Mr. Murphy present in your office when those parties signed those checks?

A. I think not.

(Testimony of witness closed.)

M. B. HARBEN, recalled, in behalf of appellant, testified as follows:

Q. (By Mr. JUREY.) You are the M. B. Harben who testified in this case heretofore? A. Yes, sir.

Q. Mr. Harben did you go to West Seattle yesterday in company with Mr. Murphy, and Mr. Martin and Mr. Kelly and myself? A. Yes, sir.

Q. And called with us at the house of Mr. Newman?

A. Yes, sir.

Q. And talked to him in West Seattle?

A. Yes, sir.

Q. Were you present when Mr. Murphy pointed out and located Mr. Newman's house?

A. Yes, sir.

Q. Was or was it not the house that you saw Mr. Newman in at the time you have heretofore testified to?

A. Yes, sir; the same house.

Q. Do you recall whether or not a great number of neighbors, particularly his neighbors, were called in to witness our call upon Mr. Newman?

A. I know that we were detained and not allowed to see Mr. Newman until the neighbors were gathered in by Mr. Martin—he had some purpose in wanting a crowd there.

Q. I will ask you if you recall one Mr. Goldie coming up to where we were in front of the house?

A. I do.

Q. Do you recall what remark he made when he came up? A. The remark Mr. Goldie made?

Q. Yes.

Mr. MARTIN.—Objected to as irrelevant, immaterial and incompetent, and I move to strike it out.

A. I remember a conversation that occurred between Mr. Goldie and Mr. Martin, is that what you refer to?

Q. What did Mr. Goldie say when he came up?

A. First he wanted to know what they wanted with him.

Q. Do you recall the remark that Mr. Martin made to Mr. Goldie in reply to which I called the particular attention of yourself and Mr. Kelly and Mr. Murphy to bear witness to? A. I think so.

Q. Will you state what it was?

A. Mr. Martin stated in answer to that query as to what they wanted—when Goldie asked him what they wanted, he said that somebody had been telling it around that Mr. Newman worked down on the grade, and he said, “Of course we all know that that aint true, but,” he says, “there are some of them are going to try to make out that way, and say so, and I want you here and those others, and we will fix them if they do.”

Q. Was that remark made in the presence of Mr. Murphy?

A. Yes, sir, Mr. Murphy was right there.

Q. And before he had seen Mr. Newman and identified him? A. Yes, sir; before he had seen him.

Mr. MARTIN.—I move to strike this out as irrelevant and immaterial.

Q. I will ask you, Mr. Harben, since you have testified in this cause whether you have been over to West

Seattle other than the time you have just mentioned, and talked generally and particularly with the people living over there relative to this case?

A. I have talked with quite a number of them over there at different times. I have been over there a number of times.

Mr. MARTIN.—I move to strike out the answer as irrelevant and immaterial and redundant and hearsay.

Q. (By Mr. JUREY.) Do you know what the feeling of the people living around the neighborhood of Mr. Newman is with regard to this case? A. Yes, sir.

Mr. MARTIN.—I object to that as irrelevant, immaterial and incompetent.

Q. State what it is.

A. In regard to the people I have talked with over there, they are perfectly willing to see that man get a judgment, irrespective of whether it is right or not; they want to see him get a judgment against the company and get the money, irrespective of whether he is entitled to it. It is exceedingly difficult to get any one at all to speak about the matter. A number of times I spoke to a man, and while he may be very rational and conversational and speak in that kind of a way, but the minute Newman was mentioned they closed up like a clam, and say they don't know him, and would not have a word to say; men that I knew positively did know him.

Q. I will ask you how large a community or village West Seattle is?

A. Well, I can't say that as to the number of people there are; it is scattered over considerable territory.

Q. It is a small village?

A. The population is not very great, but I would not say how much, though. I should judge there was in the neighborhood of four hundred in ordinary times there, possibly not that many altogether.

Q. What character of people, in reference to their calling or occupation reside in West Seattle, and particularly around the neighborhood of Mr. Newman's house?

Mr. MARTIN.—I object to the question and move to strike it out as irrelevant, immaterial, and redundant.

A. I don't know that I can answer that. Of course those that I met—those that I have talked with are mostly working people. There might be others there that never do a day's work, but I can't say what the average of them is, or the majority.

Cross-Examination.

Q. (By Mr. MARTIN.) Did not I say—did not Mr. Goldie say to me when he came up to where we were standing, near Mr. Newman's house, "What do you want with me?" And I stated that "I want you to be present as a gentleman is coming to see Newman who says that he is the same man that worked on his grade"; and didn't Goldie say, "That is a lie," that "we all know better"?

A. No, Mr. Martin—

Q. Or words to that effect?

A. No, sir. You did not accuse anybody of being a gentleman, and he did not accuse anybody of being a liar.

Mr. MARTIN.—Read the question. I want an answer to my question.

A. I will answer it.

(Question repeated.)

A. No, sir; that is not true.

Q. In substance, was not that the conversation?

A. No, sir—in two or three respects it was not.

Q. And did I not say: "We know that, but we want to be in a position to show it"?

A. No, sir; you did not say that in that way, Mr. Martin.

Q. Was not that the substance of the conversation?

A. The substance of your conversation was just as I repeated it in the first instance. You did not accuse anybody of being a gentleman and he did not accuse anyone of being a liar. You were the first one to say, "We know that it is not true, and we will fix anyone that says it is true."

Q. Wasn't it Goldie that said that?

A. No, sir, you were the first one.

Q. And did not I say to you, knowing that you had been running around as a detective, trying to scratch up evidence and to get people to come in here and testify as a detective on a salary, that I told you I knew that was not the truth and said that I proposed to prove it, and that I would fix you—were those not my remarks to you?

A. You said a good many things, Mr. Martin, similar to that to me several times, but not in Goldie's presence.

Q. While he was standing right there as near as Mr. Murphy was?

A. You did not say anything of the kind in Goldie's presence. You did say to me, or something similar to it, but you did not say it in his presence. You did not say that to me up on the hill; you said it to me down below.

Q. Did not I say it to you up there on the hill up by Newman's house? A. In Goldie's presence?

Q. Yes. A. No, sir; you did not say it.

Q. And Murphy was standing right there where Goldie was?

A. No, sir. You made the remark to me.

Q. You have been on a salary, haven't you?

A. I get paid for my work.

Q. How long have you been working on this case?

A. I could not say exactly.

Q. When did you start in?

A. I think my first trip over there was on the 24th day of April.

Q. You went over there under salary?

A. I get paid for any work I do. I get my salary.

Q. And with authority to purchase witnesses if you can purchase them?

A. I never had authority to purchase anything.

Q. You have authority to bring witnesses—to purchase witnesses, if you can?

A. I never had a dollar in my possession at any time to purchase or influence a witness.

Q. You had money at your disposition where they could get it, with which to get witnesses to testify to matters which you suggested?

A. Is that a question or an assertion?

Q. It is my question.

A. I never had a dollar for that purpose, or any similar purpose.

Q. How long have you been working on this case?

A. Since the 24th of April, I think it was; I could not

swear positively, but I think that was the date I made my first trip over there.

Q. And you have been working constantly ever since that time?

A. No, sir. I worked on a dozen cases since then.

Q. How many days did you work on this case?

A. That I cannot say exactly.

Q. A month? A. Oh, no; oh, no.

Q. Nearly a month?

A. No, sir, not half of that actual time put in. If I had worked on it a month you would not have a leg left to stand on.

Q. How much money have you paid Mr. Murphy for his testimony in this case?

A. I never paid Mr. Murphy one penny in my life for his testimony, or for any other purpose.

Q. What promises, if any, have you made Mr. Murphy for his testimony in this case?

A. I never promised him one cent, directly or indirectly.

Q. How much is Murphy to get for testifying as he did in this case?

A. I have not the slightest idea how much he is going to get, whether he is going to get anything; I don't know anything about it.

Q. Did you procure any person to go over to Newman's house and by prying around the windows to get him up when he was alone? A. No, sir.

Q. You had numerous people go over there?

A. What do you mean by numerous?

Q. A number of persons to go over there.

A. To go to his house?

Q. To go into his house.

A. I can give you the names of everyone I sent there, if you want them.

Q. Give us the names.

A. Mr. Murphy, the United States marshal, is all I got to go. I know that Mr. Kelly was sent there by Mr. Gardner, but that is all I sent—that is all I know of.

Q. Did you send anybody else?

A. No, sir. It is possible there may have been one that I can't think of now, but I don't think that I sent anyone. I also think that I tried to get others to go, who refused to go, and didn't go.

Q. You say you did not send anybody over there early in the morning of yesterday to try to get in the house to see what they could do by raising the windows in his house?

A. No, sir, I didn't send anybody there, but you sent someone ahead of you.

Q. Oh, no. A. Oh, yes.

Q. They went over with us on the same boat?

A. No, sir. You sent that young man that was in here that went ahead of you.

Q. Didn't he come on the same boat?

A. No, sir. He was ahead. He was coming back at the time we got there.

Q. Didn't he walk up the hill with me about twenty rods behind?

A. He was over there inside the house when we first went up there, walking backwards and forwards at the side of the house, on the south side of the house.

Q. Before the boat landed?

A. Before we got up there and we went up straight from the boat.

Q. Didn't he come over on the same boat?

A. No, sir. He was over there before. He was standing outside the house.

Q. You are positive of that—as positive of that as anything else you testified to?

A. I am positive he was there when we got there.

Q. You are as positive of what you said a moment ago as anything else you have testified to in this case?

A. I don't say that. I said he was up there at the house when we got there.

Q. Well, I know that he went over in the same boat.

A. Well, I didn't see him on the boat. I would not state positively—he might have run up a short cut up the hill and got there ahead of us.

Q. (By Mr. JUREY.) Mr. Harben, I will ask you if you went into Mr. Newman's house on yesterday when we were all present.

A. Yes, sir.

Q. Did you see Mr. Newman?

A. Yes, sir.

Q. Will you describe his position and appearance?

A. Yes, sir. He was lying on his back on a lounge partially covered up with clothing, and he had a band around his head, around his forehead, reaching back, and pretending at least or affecting to be a man that was suffering very much from something or other—like a sick man or a man that was suffering a great deal.

Q. Were you present when Mr. Murphy spoke to him?

A. Yes sir.

Q. Do you recall his remark to Mr. Murphy?

A. Yes sir.

Q. Will you state what it was?

A. Mr. Murphy stepped up to him so as to look right in his face, and he said, "How do you do, Newman. Do you remember me being here two or three weeks ago calling on you?" And he replied "Yes, there has been a hundred of your or a hundred and fifty—either a hundred or a hundred and fifty."

Q. (By Mr. MARTIN.) That was a warm day yesterday, was it not? A. Rather warm.

Q. Unusually warm for this place?

A. Yes sir.

Q. You knew that the deputy marshal had been over there threatening him with arrest?

A. I went with the deputy marshal over there the day before when he went to serve a paper on him to appear here in this court.

Q. What time was it that you went there that day?

A. On the 1.30 boat we went over there.

Q. You left Seattle at 1.30? A. Yes, sir.

Q. What time did you get up to Mr. Newman's house?

A. I did not look at the exact time then.

Q. Something after two o'clock.

A. It was about five minutes of two o'clock when we got there. We got off of the boat after we had been detained by getting into an argument with Newman. Newman came up to the door and opened the door for him and then slammed the door in his face and he showed Newman his star, that he was a deputy marshal.

Q. Told him he had to come to court and come at once? A. I didn't hear all the conversation.

Q. Didn't you? A. I kept back about a block.

Q. And didn't he tell Newman that he would be arrested if he didn't come with him?

A. I didn't hear that. I heard him from a distance. I know that Newman slammed the door in his face, and he said, "You might as well open, it, or I will."

Q. Didn't he know that Newman was in a crippled condition?

A. I don't think there is a man in the state of Washington knows he is in a crippled condition, because he is not.

Q. Well, he is in a crippled condition, and you know that he is and that he has been in a crippled condition.

A. I don't know what he used to be, but I know what he was when I saw him, and he showed no indications of it then.

(Testimony of witness closed.)

Mr. JUREY.—I will be sworn myself.

JOHN S. JUREY, being first duly sworn, testified as follows:

Mr. JUREY.—I wish to state to the commissioner, as I have no associate counsel within reach, I will beg leave to make a sworn statement:

On the 8th day of June, 1900, I served a demand upon Mr. William Martin, proctor for the appellee, for a surgical examination of the appellee, and now offer the original notice in evidence with Mr. Martin's admission of service on the back; and that on the same day I caused the same notice to be served upon the appellee personally, and the constable's affidavit who served the notice

is attached to the original, and I now offer the notice in evidence as an exhibit "F."

Mr. MARTIN.—I move to strike out these as irrelevant, immaterial, incompetent, redundant and incumbering the record.

Mr. JUREY (Continuing).—On the 9th day of June, 1900, a written reply to the notice which I have referred to was served upon me and I now offer in evidence a copy of the reply which was left at my office, which I ask to be marked as Appellant's Exhibit "G." As yet the appellee has made no response personally to the notice. With reference to the subject matter of the reply I will state that my partner and associate in this case, Mr. Metcalfe, dealt personally with the surgeons whom we desired to have make the surgical examination of the appellee last fall, and also dealt personally with Mr. Martin with reference to the surgical examination, and also appeared personally in court at the time during last fall when the application was made to the court for leave to make the surgical examination of the appellee and, therefore, I have no personal knowledge of those transactions and dealings, but that during all the times mentioned Mr. Metcalfe and myself were full partners and actively engaged in the defense in this case, and consulted freely and fully as to every act and step that was taken, and I felt, and feel now that I am fully advised and was all the time fully advised of every step that was taken in the case. I have no personal knowledge, whatever, of Drs. Eagleson and Ford, or either of them, or any other surgeon, or any one whomsoever, assuring us, or any one representing the

ship, that Drs. Eagleson and Ford, or any other surgeon, could or would contradict the testimony of Drs. Miller and Wotherspoon; or that we received any assurance whatever from Drs. Eagleson or Ford, or either of them, that they could, if opportunity was afforded to make a proper surgical examination, determine whether or not the appellee was injured, and the nature and extent of his injuries. And with reference to the communications with Mr. Martin, I have no knowledge whatever of any offer or consent on the part of Mr. Martin, or any one for him, to make a surgical examination of the appellee that was not withdrawn or qualified in such a way that it would prevent a fair and full surgical examination on our part before such an examination could be reasonably made. That while Mr. Martin several times consented that a surgical examination might be made, yet, as I understood from the reports of my partner made to me of the transactions immediately after such dealings, they were always coupled with such conditions or limitations as we could not accept; and with reference to the statement in the notice relative to permitting Judge Hanford to select surgeons to make a surgical examination at the time of the notice which I have just referred to was served, while Mr. Martin did ask, as stated in the notice, if we would consent to Judge Hanford appointing and directing the surgeons; he did not offer to permit such an examination, but simply asked, as I stated in the notice, if we would consent to his selecting. I informed Mr. Martin at the time that I had no earthly objection to his making such an examination if he desired, but that we insisted upon our demand, just the same, notwith-

standing, and further, that I did not believe that Judge Hanford would select surgeons, as the case was out of his jurisdiction, and I did not think that he would have anything to do with it.

Cross-Examination.

Q. (By Mr. MARTIN.) Did I not ask you, at the time you served that notice on me, if you would consent to Judge Hanford naming the doctor's to make an examination, and did you not say at once, "No"?

A. Yes, sir.

Q. That is true?

A. That is true. And then immediately made in the same breath, made the explanation I have stated and the reasons for it.

Q. Now, Mr. Jurey, when at any time in this case have I withdrawn one single offer of consent to your making an examination, while the case was being tried in the district court, extending from about the 1st of April until in November; when did I withdraw one offer?

A. As I stated, I have no personal knowledge of your withdrawing any offer. It was simply the reports of my partner at the time that you imposed conditions or limitation that we agreed upon at the time we could not accept.

Q. Were you not present, Mr. Jurey, in court at the time at which Mr. Metcalfe made application to the Court for an order requiring the appellee to submit to a medical examination before Judge Hanford, after the time allowed by the Court to you in which to close your testimony had expired, and more than six days afterward, and did I not then get up before Judge Hanford, on the

argument of that motion, and state to the Court that I would then and there consent to Judge Hanford naming three or five physicians to make a medical examination of the appellee?

A. I was not present in court at that application, but my partner reported to me, immediately after coming from the courthouse, the result, and no mention whatever was made of any offer on your part; besides, the record shows nothing of the kind. I make this statement myself, for the reason that Mr. Metcalfe has left the city since this notice was served on us, and will not return until long after this case is closed.

(Testimony of witness closed.)

A. M. BROOKES, a witness called in behalf of the appellant, being first duly sworn, testified as follows:

Q. (By Mr. JUREY.) Where do you reside?

A. Seattle.

Q. How long have you lived here?

A. Twenty-four years.

Q. What is your business?

A. Cashier of the Boston National Bank.

Q. How long have you been engaged in the banking business? A. Ten years.

Q. And in the position as cashier of the Boston National Bank? A. Ten years.

Q. In the discharge of your duties as cashier of the Boston National Bank, you have a great deal to do with the handwriting of signatures and comparison of signatures and the determination of their genuineness?

A. I had fifteen years in the postoffice, which was more valuable than that.

Q. How many years in the postoffice?

A. Fifteen; and twelve years in the San Francisco postoffice.

Q. Have your duties as cashier of the bank and your experience in the postoffice rendered you an expert in handwriting and the comparison of signatures?

A. Well, I had a great deal to do with it.

Q. You discharge your duties as cashier on the strength of your ability to compare signatures and determine their genuineness?

A. That is a part of the duties of a cashier, of course.

Q. Mr. Brookes, I now show you the original record in the case of Charles H. Newman against the steamer "Homer," No. 1568, in the United States District Court for the District of Washington, and I call your attention particularly to the signature "C. H. Newman" to the libel, the signature "C. H. Newman" to the verification of the libel, the signature "C. H. Newman" to the libelant's bond and stipulation for costs, and the signature "C. H. Newman" to the amendment to reply, the signature "C. H. Newman" to the verification of the same, the signature "C. H. Newman" to the verification of the replication, and the signature "Charles H. Newman" to the reply to amendment to amended answer, which are established and admitted genuine signatures of Charles H. Newman, the libelant and appellee in this cause; and also show you Appellant's Exhibit "B," and call your attention to the signature "H. Newman" at the end of the exhibit and under the words "Received payment," and ask you if the signatures to the exhibit are the same signature and handwriting and written by the same per-

son as the signatures in the record, particularly the signature to the reply to the amended answer (showing)—the signatures in the record are admitted genuine signatures of C. H. Newman, the appellee in this case.

A. It resembles all the signatures more or less, but this one more particularly than the rest.

Q. I understand that it is your opinion as an expert that the signature "H. Newman" to Appellant's Exhibit "B" is the same handwriting and the same signature?

A. Not the same signature exactly, because it is a different initial, but the "Newman" part is written by the same party evidently.

Q. As the signatures to the documents in the record which I called your attention to, particularly the reply to the amendment to the amended answer?

A. Yes, sir.

Q. I will show you Libelant's Exhibits "D" and "E," and ask you if they were written by the same person, and are the same signatures, with the exception that the first name is "John," while the name in the record is "C. H." and "Charles H," as the signatures in the record if they were written by the same person?

A. I should think so.

Q. I understand you to testify that it is your opinion as an expert that the signatures "H. Newman" and "John Newman" to all three of the exhibits I have shown you, is the same handwriting as the signatures "C. H." and "Charles H. Newman" to all of the documents in the record that I have called your attention to?

A. That is my opinion; yes, sir.

Q. I will ask you if it appears that the same kind of

a pen was used in writing the signatures on the exhibits and the signatures in the record?

A. Those two (referring to exhibits "D" and "E") were written with a pencil. The exhibit "B" is written with a different kind of ink; I should think it was a blunter pen.

Q. Mr. Brookes, would a person attempting to forge a signature which was written in ink be apt to use the same kind of a pen and ink or a different kind?

A. Well, I should think he would try to make the signature as near as possible, and in order to do that he would certainly have to have as near a pen as was used in the original as possible.

Q. Would a man that was attempting to forge a signature written in ink be apt to use a lead pencil?

A. Decidedly not.

Cross-Examination.

Q. (By Mr. MARTIN.) What characteristics have the signatures "John Newman" on exhibit "D" got to the characteristics of the signature "H. Newman" on exhibit "B" (showing)?

A. Well, there is a very great similarity between them in the entire name.

Q. Well, start in with the name "Newman."

A. That is the name—that is the only name that we are going by, because the initials are varied so.

Q. Is the "N" in the word "Newman" in exhibit "D" the same as the "N" in the verification to the reply to the amendment to the amended answer?

A. As near as anybody ever would write them.

Q. The "N"—the capital "N."

A. The capital "N" is not.

Q. There is no resemblance of any nature or kind whatsoever between the capital "N" in the word "Newman" in exhibit "D" and the capital "N" in the word "Newman" in the reply? A. None.

Q. None whatsoever? A. No, sir.

Q. What resemblance is there to the next letter in the word "Newman?"

A. It is as near as a man could write it.

Q. The "e"? A. Yes.

Q. You say that is as near as a man would write it?

A. That is as near as a man would write it twice.

Q. Does not the lower line raise and come up in a rounding way, and come down the same?

A. Yes, sir.

Q. Leaving quite a space in the center of the letter "e"? A. Yes, sir.

Q. Now, in the "e" in the exhibit there is no space left whatever? A. None whatever.

Q. There is no crossing of the lines?

A. No, sir.

Q. The pen goes straight up and comes down?

A. That is because the pen is blunt and the ink is thick.

Q. But there is no rounding of the "e" the way there is in the other?

A. No, sir. Look at the "e" in the "Charles"—there is no rounding there, is there?

Q. Not as much as in the "Newman."

A. The very difference in the signature is to me proof

conclusive that there could be no forgery. No man writes his name alike twice.

Q. In these exhibits the letters are entirely different?

A. In those exhibits which you spoke of it was made by the same party.

Q. But what you mean to tell the commissioner is that from the general appearance those signatures all could be written by the same person?

A. Yes, sir.

Q. And they might all not have been written by the same man?

A. That is very doubtful. It is very doubtful. I think it would have been a forgery if it had.

Q. Suppose it was a forgery.

A. The best evidence that they are not a forgery is that they are not alike.

Q. Now, I will ask you, Mr. Brookes, if you can pick out a signature in those pleadings wherein it would be possible to produce that signature in the pleadings and the signature on exhibit "D" by holding the pen in the same position or the position a man naturally would hold his pen in writing—pick out one name in the pleadings here which you could produce the same results by holding the pen in the same position as it was held in when he wrote the signature in exhibit "D."

A. I don't see a signature in there that could not be written in the same position—every one of them—these are the same.

Q. You say that the signature to the reply to the libel could be written by holding the pen in the same position that the signature of "John Newman" could be written on exhibit "D"?

A. That is my opinion exactly.

Q. I will ask you if the letter "N" in the word "Newman" on the libel does not show that the pen was held in the usual style and necessarily held in that position in order to produce that letter?

A. That would be my idea.

Q. You could not get that shading down there (showing) and this light line this way by holding the pen in any other position, could you?

A. Well, I am not prepared to say that. I have seen some very peculiar things done with the pen by experts.

Q. Could you get that shading by holding the pen in that position (showing)?

A. I don't think I could.

Q. Could this signature on exhibit "D" not have been written by holding the pen between the fingers?

A. I doubt it very much.

Q. I will ask you if that signature in exhibit "D" could have been written by holding the pen in any other position than holding it between the fore and digit finger?

A. Undoubtedly.

Q. You think it could?

A. Unquestionably, no question about it.

Q. I will ask you why you think so?

A. For the same reason that I think it was written as it is—that is the only reason I think so.

Q. By holding the pen in the natural position you could produce it and by turning the pen between the two fingers and pressing it down, would it not produce that shade by bringing the pen down? A. No.

Q. By holding your pen in this position you get the light line which you find on the rise in exhibit "D" in

the name "Newman" could you not in that same line down there?

A. I don't see any shade in that name at all. It looks to me very like it was written with a very blunt pen. There is no shading about that name that I can see.

Q. I will ask you to look at that signature on exhibit "D" (showing), if the end of the "N" is written up, then the "e" would not be made by holding the pen between the forefinger and the large finger?

A. No, I don't think so. There is no rule to guide a man that writes a hand like that.

Q. Could you as readily make that signature by holding the pen in the natural position and get the shading as you can the other way?

A. I have examined it closely, and it is apparent on the face of it—if it was written in that way they could not have made the "o" in the world, if it was between the fingers.

Q. Why not? A. Because it is too round.

Q. Why could you not make it round just as well by holding the pen between your fore and large finger as the other way? A. Because it is not natural.

Q. Do you mean to say that you can't do it?

A. It is not natural to do it. I write frequently with the pen between the fingers, but it has this tendency, it is more of an angle. You don't make round figures.

Q. These are not round figures, are they?

A. Some of them are.

Q. Very few? A. Some of them are.

Q. That "o" which you referred to, the pen was taken from the paper?

A. This "n" and "m" are exactly like the other.

Q. Is that "m" a round "m"?

A. It is to all intents and purposes—it is not what you would call a sharp "m."

Q. Is that "m" as round as the "m" in the libel?

A. The "n" is.

Q. I am asking you if the "m" is.

A. Well, probably it is not as round, but it is written with a different pen.

Q. Is it as round as the "m" in the verification in the libel? A. Just as round.

Q. Just as large and curved at the top as the other "m" is? A. Yes, sir.

Q. Is it as round as the "m" in the bond in the word "Newman"? A. No, sir, it is not as round.

Q. I will ask you if the name "John Newman" does not show or indicate a man that is not familiar with writing or used to writing? A. Undoubtedly.

Q. I will ask you if the signature to the pleadings does not show a free and easy movement of the wrist and hand in writing the word "Newman"?

A. Yes, sir, to a certain extent.

Q. To quite an extent?

A. Yes, sir, compared with the other signatures, yes.

Q. And in the verification. A. Less.

Q. Slightly less, you think? A. Decidedly less.

Q. And there is more of a movement in all of the signatures, apparently, in these pleadings than there is in the signature on exhibit "D" is there not?

A. Yes, sir.

Q. Every one of them? A. Yes, sir.

Q. More of a free and easy movement?

A. Yes, sir.

Q. And the signature in exhibit "D" is a cramped and steady movement.

A. I would like to qualify that. The latter part of the word Newman is almost identical in every signature. The first part and the large letters, there is a very great difference in the manner in which they are written.

Q. You refer to the last three letters in the word?

A. The last four or five letters.

Q. The last three letters you see in the name, is that what convinces you it is the same handwriting?

A. Not entirely.

Q. But you say there is a vast difference in the others?

A. That is apparent, I think, on the face of it. It does not require any of my say so.

Q. You were just stating a moment ago that the last three letters in all the documents convinces you?

A. I will say the last four letters, commencing with the "w" and the "e"—all but the capitals. The freeness seems to be in the capitals. The difference in the size of the letters—I don't know what you would call it, whether you would call it freeness or not, but they are larger signatures.

Q. I will ask you if the signatures in all those pleadings of Mr. Newman's does not indicate a man that was in a feeble nervous condition?

A. Some do and some do not. The last signature in those pleadings I would not consider the signature of a man in feeble health at all. Some of the other signa-

tures shows a man was nervous, but that is nothing. I never saw a man that is not used to writing sign his name in our signature book but what he was more or less nervous and probably ten minutes afterwards would write a different signature.

Q. Are not those signatures the same, or such that a man who was in a crippled condition and who was not able to sit up and was compelled to lie on his face and to get a support under his chest in order to raise his hand from the bed sufficient to write these signatures, such as a person in that position would naturally make?

A. You mean these in these pleadings?

Q. (Showing.)

A. That one certainly is not

Q. That is in the libel? A. Yes, sir.

Q. And the verification?

A. That is a little more cramped.

Q. In the libel and the verification, you would say that it indicates that the man was sitting up in a strong good position?

A. I would say that the man had command of his hands and could write.

Q. And was free to write?

A. Of course I could not say about that. I could say that the man could use his hand and could write firm.

Q. That would not indicate the condition a man would be in that could not even move or turn his body at all, but must lie on his face in bed?

A. No. A man could use his hand to write—I don't know what the position of the balance of his body must be in if he has the free command of his hand.

Q. A man with a broken back?

A. If he could write I don't see that there is anything in this case that indicates that any ailment is hindering him from writing; I would say that that would be his signature right straight along.

Redirect Examination.

Q. (By Mr. JUREY.) I will ask you if you see anything in the signatures to those exhibits which would indicate to your mind as an expert any of the features or characteristics of an expert penman?

A. Decidedly not.

Q. (By Mr. MARTIN.) If these signatures in exhibit "D" are forgeries, would it not be the work of an expert penman?

A. Well, I don't think that would necessarily follow.

Q. It would not? A. I don't think so.

Q. In other words, simply because it is poor handwriting that an expert would not imitate poor handwriting?

A. No, sir, I wouldn't say that at all.

Q. An expert would use a fine hand in order to forge another signature?

A. He would endeavor to make the signature look like the signature he was copying if possible, certainly.

(Testimony of witness closed.)

E. A. GARDNER, recalled, in behalf of appellant, testified as follows:

Q. (By Mr. JUREY.) Mr. Gardner, since you testified in this case have you been to West Seattle where the appellee resides and talked generally and particular-

ly with the people residing over there, particularly in the neighborhood of Mr. Newman and with those who know him?

Mr. MARTIN.—I objected to as irrelevant, immaterial, incompetent and encumbering the record and nothing but hearsay and nothing to do with the case whatever.

A. I have been to West Seattle and I have talked with several different people that I have met casually, but not generally have I talked with the people over there.

Q. What was the disposition and feeling of the people at West Seattle with whom you talked towards Mr. Newman?

A. A very kindly feeling towards Mr. Newman and a very deep sympathy for Mr. Newman.

Q. Did you find them free or loathe to give you information pertaining to this case or Mr. Newman's condition?

A. Loathe to talk about it at all.

Q. Did you find any difficulty in ascertaining his condition and movements from the people residing in that vicinity?

A. Not personally, I have not, because from the time that I went over there they have been advised of the work that was being done. Understand, I sent some of my men over there some time before I went, and the statements that were made to my men were very different from the subsequent statements that were made to me—people talked more readily to me—what little they did say was different from the statements that were reported to me by my men.

Mr. MARTIN.—I move to strike out the witness' answer because the witness did not hear the statements

made to his men, and is simply testifying to what his men told him and hearsay.

A. I am testifying to what they said to me—to me there has been one line ever since I have been there—

Mr. MARTIN.—I move to strike this out as hearsay.

A. (Continuing.) I have had difficulty in getting any one in West Seattle to talk to me about the Newman case.

Mr. MARTIN.—I move to strike this all out as irrelevant, immaterial and incompetent.

(Testimony of witness closed.)

Seattle, June 14, 1900.

Continuation of proceedings pursuant to adjournment,
4 o'clock P. M.

Present: J. S. Jurey, Esq., of proctors for appellant;
William Martin, Esq., of proctors for appellee.

FREDERICK K. STRUVE, a witness called on behalf of the appellant, being first duly sworn, testified as follows:

Q. (Mr. JUREY.) What is your full name, Mr. Struve? A. Frederick Karl Struve.

Q. Where do you reside?

A. In the city of Seattle.

Q. How long have you resided here?

A. About twenty-four years.

Q. What is your business?

A. I am paying teller of the First National Bank.

Q. How long have you been occupying that position?

A. With the First National Bank about two years and two months.

Q. Did you have any experience in the banking business prior to that time?

A. Yes, sir, about eight years.

Q. What bank were you connected with?

A. The Boston National.

Q. What position did you occupy with the Boston National Bank?

A. I occupied nearly every position from messenger to assistant cashier during the eight years. Most of the time I was in the receiving teller's and paying teller's position.

Q. In the performance of your duties as paying teller particularly, did you have a great deal to do with handwriting and signatures, to determine whether they are genuine or forgeries?

A. The responsibility of passing upon these things falls upon the paying teller, yes.

Q. Your experience in that particular has rendered you an expert in handwriting, in comparing handwriting and signatures?

A. If you will pardon me making an explanation, Mr. Jurey—I was asked that question once before about being an expert, and I can answer it in this way; that it is necessary in my business to be able to determine about these things and naturally, I suppose, although I would not pose as an expert I must have naturally acquired considerable knowledge in that direction.

Q. You pay out the moneys of the First National Bank, upon the strength of your ability to detect the genuineness of signatures and writing?

A. Yes, sir.

Q. Mr. Struve, I will call your attention to and place before you the original in this case, the signature of Charles H. Newman, the libelant against the steamer "Homer," page 1468, in the United States District Court for the District of Washington, Northern Division, and call your attention to the signature of C. H. Newman to the libel, and the signature of C. H. Newman to the verification of the libel, and to the signature of C. H. Newman to libelant's bond or stipulation for costs, and the signature of C. H. Newman to the amendment to the libel, and to the signature C. H. Newman to the verification to the same, and to the signature C. H. Newman to the verification to the replication, and to the signature, Charles H. Newman to the verification of the reply to amendment to amended answer, which are all admitted the genuine signatures of C. H. Newman, or Charles H. Newman, the libelant and appellee in this case. I call your attention particularly to the signature Charles H. Newman to the reply to the amendment to amended answer, and also to the signature H. Newman on the end of Appellant's Exhibit "B" and to the signature H. Newman under the words "Received payment" on the same exhibit, and ask you if, by comparison, the signature on the exhibit and the admitted signatures in the record are the signatures of the same man, and in the handwriting of the same individual.

(Witness examines signatures.)

A. It is my opinion this is written by the same man.

Q. You think you are able to tell by that comparison whether it is the same signature or not?

A. I maintain it is my opinion it is the same signature, yes.

Q. And I understand you to say the signature H. Newman on Appellant's Exhibit "B" is the same signature and handwriting of Charles H. Newman to verification to reply to amendment of amended answer?

A. Yes, sir.

Q. And the same signature as the other signature C. H. Newman to the record I have called your attention to?

A. Yes, sir.

Q. I show you Appellant's Exhibits "D" and "E" and ask you to compare the signatures of John Newman of these exhibits with the signatures that I have called your attention to in the record, and state whether or not these signatures are the same?

A. I think they are.

Q. And I understand you, Mr. Struve, that in your opinion the signature John Newman on Appellant's Exhibits "D" and "E" are the same signature and written by the same person as the signature of Charles H. Newman to verification of reply to amendment of amended answer in the record, and the other signatures in the record that I have called your attention to?

A. Yes, sir.

Q. I show you the three exhibits, Appellant's Exhibits "B," "D" and "E," and ask you if the signature "H. Newman" on exhibit "B" and the signature "John Newman" on exhibits "D" and "E" are the same signatures or the signatures of the same person, and the handwriting of the same person?

A. It is my opinion they are all written by the same person.

Cross-Examination.

Q. (Mr. MARTIN.) Is there any difference between the signatures on any one of these exhibits?

A. Yes, sir, there is a difference, Mr. Martin.

Q. What is it?

A. There is a difference in the forming of the "N" in several of them here.

Q. What is it?

A. In this signature of John Newman he connected his letters all the way through, and in this other one "H. Newman" he makes a break between the "M" and the "A."

Q. Exhibit "E" is written by a pencil, is it?

A. Yes, sir.

Q. Exhibit "B" is written by a pen?

A. Yes, sir.

Q. What difference is there on exhibit "D" written by pen and ink and the name on exhibit "B" written by a pen?

A. The general character of the writing is the same. The "N" again in that case is differently made.

Q. Is the "W" the same?

A. Not exactly but almost the same.

Q. Is the "M" the same?

A. Yes, sir.

Q. The "M" in exhibit "D" is sharp at the top and sharp at the bottom, and the "M" in exhibit "B" is round at the top, is it not?

A. There is very little difference.

Q. Quite a difference, is there not?

A. Not a difference but what is easily accounted for.

Q. As much of a difference as you usually find between the same letter made by two different persons, is there not?

A. Yes, that might be, but at the same time the letter "M" is a letter that is made—that most people will make very nearly alike, so that there is little to distinguish.

Q. So that most people writing "M" would write it just about the same as appears in all of these letters?

A. That depends upon the man's ability to write well.

Q. What kind of penmanship would you say that signature of John Newman on exhibit "D"?

A. I should call that signature the signature of a man that was not very much accustomed to writing or handling a pen.

Q. It shows strength, does it not?

A. Shows that he has written it.

Q. And awkwardness?

A. Yes.

Q. Strength and awkwardness. The weight on the pen, does it?

Q. No, not necessarily, Mr. Martin. It depends very much on the kind of pen that he had, the kind and quality of the ink.

Q. I ask you to look at the signature to the amendment to the libel, and ask you if that signature of C. H. Newman does not show nervousness and weakness?

A. Shows more of a lack of decision, yes.

Q. Shows lack of decision?

A. I should call it that.

Q. In other words, if a man was perfectly able to write and was attempting to forge a name that might be an indication of lack of decision there, would it not? Or a consideration of what he was going to do?

A. Well, that could be accounted for by a man's being nervous.

Q. And weak?

A. I do not think that it would necessarily express weakness, Mr. Martin. Somthing might have come up to have made him nervous at that time.

Q. But if a man was in a crippled condition, so much so at the time he wrote his name there that he was not able to sit up, that he was not able to lie on his side or lie on his back, but was compelled to lie on his face and had to have a support under his chest to get his arms sufficiently off the bed in order to write that name, would not that be about the manner in which a man's hand would make it?

A. That would easily account for it.

Q. Now, did you find anything in the signature of John Newman on exhibit "D" to indicate anything of that kind?

A. Pardon me for asking a question, but do you mean do I see anything in this signature to indicate that he was not well at the time, or was in a nervous condition or written under like conditions?

Q. Do you see anything in the signature of John Newman on exhibit "D" which would indicate that the man was in the condition that I have now just described to you, that the libelant Newman was in when he signed his name to the amendment to the reply?

A. No, I should not think so.

Q. You do not see that in any of the signatures, do you, on any of these exhibits?

A. That extreme nervousness that we see in this one?

Q. Yes.

A. No.

Q. I will ask you to examine all the pleadings to which you see the name of C. H. Newman, having in view a man in the position and condition which I have described to you, and state if that signature is not the natural consequence of that condition, and if that condition does not indicate itself in that signature all the way through?

A. This one would not indicate a man in a very cramped condition.

Q. Not possibly as much as some of the others.

A. Not as much as the one you showed before.

Q. That is the signature on the bond?

A. Yes, sir.

Q. Examine the rest of them.

A. This one is very much more so than the one you just showed me.

Q. The one on the amendment of the libel would show more of what I say than the signature to the bond?

A. Yes, sir.

Q. That is possibly true. Now, look at some of the others and see if you do not see that characteristic throughout his signature?

A. This one again shows nervousness or a peculiar condition of some kind, but not to such a great extent as

the other one. (Referring to amendment to libel.) This one shows that some, the signature to the affidavit to the replication. I do not notice any great cramped position or any undue excitement in that signature. (Referring to reply to amendment to answer.)

Q. Does not the signature on exhibit "B" indicate a studied copy of the signature to the reply to the amendment to the amended answer, and would that not be such a signature as a person would ordinarily make if he was endeavoring to imitate the signature to the reply to the amendment to the amended answer?

A. No, I do not think so.

Q. You do not think a person in copying and endeavoring to imitate that name could produce the signature you found on that exhibit?

A. No, I do not think so.

Q. Now, about the name on exhibit "D" as compared to the signature of Newman to the verification to the libel?

A. I see no difference but what could be easily accounted for.

Q. Would not the signature you are looking at on exhibit "D" be about such a signature as a man would make in case he was trying to forge the name of Newman or imitate the name of Mr. Newman, taking the name as written to the verification of the libel as a copy?

A. If he were trying to forge it I think he would pay more attention to detail.

Q. How would it be if he had reference to the several signatures there as you will see all the way through, and trying to imitate the handwriting of Mr. Newman

as shown by the different signatures on these pleadings of Mr. Newman's?

A. I do not believe that I quite understand your question, Mr. Martin. Do I understand you to ask how would this appear as a forgery as compared with the signatures, the admitted signatures of Mr. Newman?

Q. Supposing a man had these admitted signatures of Mr. Newman, and was endeavoring to imitate his handwriting following these, would that signature not be such a signature as a person of that kind would endeavor to make, referring to the signature on exhibit "D"?

A. I think he would be inclined to follow out the details a little more carefully than in this signature.

Q. Can you determine the position that the man held the pen when he wrote the signature on exhibit "D" there?

A. The position in which he held his pen?

Q. Yes.

A. No.

Q. Is there anything to indicate the position in which the man held the pen that wrote the signature "John H. Newman" on exhibit "D"?

A. No, with the exception that I might say that this on exhibit "D," "John Newman," is apparently more of a cramped position than the "C. H. Newman."

Q. That is not as smooth a handwriting, is it?

A. Apparently not; and another thing could be accounted for, that this is very much softer paper and more in the nature of a blotting paper, while this is a harder paper and will not take up as much ink.

Q. Would that make any difference in the movement in the writing?

A. The position?

Q. No, the heft of the paper.

A. Make any difference in his position?

Q. No, the question of movement of his hand in writing?

A. Well, the pen that he might have had would have had something to do with that and also his position.

Q. I will ask you if the "C. H. Newman" there in the verification to the libel does not show a free movement of the wrist and hand?

A. Much freer than these others.

Q. Would it indicate a man who has had some little experience in writing?

A. No, I still think that the position would account for it.

Q. Does not the signature to the libel indicate a free movement of the hand?

A. More so than this signature?

Q. More so than the signature to exhibit "D"?

A. Yes, sir.

Q. You notice that there is quite a difference between all of these signatures and the signatures on exhibit "D" is there not?

A. Yes, there is a difference.

Q. And could very readily have been written by two different people?

A. I do not think so.

Q. I will ask you if you have not seen signatures by two different parties wherein the handwriting would re-

semble more than these two signatures, referring to the libel and exhibit "D"?

A. I have seen two signatures of the same man that would be further—which would not resemble each other as much as these do.

Q. That is not the question.

A. Oh, I do not think that I have seen signatures—if you study the signatures carefully written by two men they would show a greater lack of resemblance.

Q. In the first place what position would you say the pen was held in by the man who wrote "John Newman" to exhibit "D"?

A. I should not attempt to explain the position of the pen.

Q. I will ask you, Mr. Struve, if it would be possible for a man to write these two signatures, referring to the signature "John Newman" on exhibit "D," and the signature of Charles H. Newman to the verification to the libel, holding the pen in the same position in both instances?

A. Holding the pen in the same position?

Q. Yes, sir.

A. I think it would.

Q. I will ask you to try and write these two signatures, Mr. Struve, on a piece of paper, holding the pen in the same position, and imitating the two.

Mr. JUREY.—You need not do that.

A. I did not come here to do that; unless I am absolutely compelled to I prefer not to. As I understand it I am called here to give my opinion as to whether these were written by the same man, and not called here to give an exposition of my ability to write or imitate other people's writing.

Q. I will ask you if the position of the pen was not such as I now indicate, and held in the one usually directed by the Spencerian system, between the thumb and forefinger, resting partially between the forefinger and the thumb and pointing over the shoulder; now, if the pen was not held in that position when the word "C. H. Newman" was written there?

A. I do not know.

Q. Do you not know that if the pen were held in any other position than the one that I have indicated that you could not make that "N" as it is made there?

A. No, I do not.

Q. Would it not be necessary to hold the pen in that position in order to get the light line on the upraise of the "N" and the heavy line shade as you come around?

A. When you designate that as the Spencerian system you mean holding the pen in the natural way that men are accustomed to hold pens?

Q. Yes.

A. I should say that was held that way.

Q. And that "N" could not be made in any other position?

A. I do not believe that it was held between the fingers?

Q. Could not be?

A. I do not think so.

Q. Now, this signature if here, for anything, it indicates could be held between the fingers just as well as in the natural position?

A. Yes, sir.

Q. But that one could not be?

A. I should say that was held in the usual manner of holding the pen, and in that one there might be a question as to how it might be held.

Q. There is nothing to indicate there in that signature whatever as to the position the pen was held in at all, simply a steady line all through with no shades or variations. That is true of the signature in exhibit "B" also, no shades or variations.

A. That is the same, yes.

Redirect Examination.

Q. (Mr. JUREY.) I will ask you if it appears that the ink signatures on the exhibits were written with the same kind of a pen as the ink signatures, or the signatures in the record?

A. The quality of the paper is so entirely different that that would be hard to determine, but I would be inclined to say that there was probably a better pen used and a better quality of paper used in the record than on the exhibits.

Q. I will ask you, Mr. Struve, after examining the ink signature on the exhibits you find any of the features or characteristics of an expert penman?

A. No, sir, not at all.

Q. I will ask you if a man attempting to forge a signature would be apt to use the same kind of a pen and ink that was used in the copy or a different kind where he is attempting to forge a signature?

A. He would be apt to try and sign the name under the same conditions as nearly as possible as the signature that he was copying.

Q. Would he be apt to use a lead pencil to forge a signature written in ink?

A. No, I should say not.

(Testimony of witness closed.)

Seattle, June 15, 1900.

Continuation of proceedings pursuant to adjournment,
3 o'clock P. M.

Present: J. S. Jurey, of proctors for appellant; William Martin, of proctors for appellee.

JACOB FURTH, a witness called on behalf of the appellant, being first duly sworn, testified as follows:

Q. (Mr. JUREY.) State your full name?

A. Jacob Furth.

Q. Where do you reside? A. Seattle.

Q. How long have you resided in Seattle?

A. Seventeen years.

Q. What is your business, Mr. Furth?

A. Banking business.

Q. How long have you been engaged in the banking business?

A. Ever since I have been here in Seattle.

Q. What bank are you connected with?

A. The Puget Sound National Bank.

Q. What position do you hold in that bank?

A. I am president of the bank.

Q. How long have you been connected with the Puget Sound National Bank?

A. Since its organization. I organized the bank.

Q. When was it organized? A. 1882.

Q. Have you held any other positions in the bank?

A. Yes, sir, I was cashier for ten years.

Q. Then president of the bank? A. Yes, sir.

Q. Mr. Furth, in your business as a banker you have had a great deal to do with the comparison of signatures and handwriting, and determining their genuineness or whether they are forgeries? A. Yes, sir.

Q. Has the experinece you have had in that particular rendered you an expert in handwriting to determine the similarity and genuineness of signatures?

A. Well, I have had a good deal of experience; whether I am an expert or not I am not in a position to say. But I am called upon very frequently now to compare signatures, and during the time that I was cashier almost daily.

Q. You paid out the moneys of the Puget Sound National Bank upon the strength of your ability to correctly determine the genuineness of signatures?

A. On my judgment, yes.

Q. Mr. Furth, I will show you the original record in this case of Charles H. Newman against the steamship "Homer," No. 1468, United States District Court, and call your attention particularly to the signature of C. H. Newman to the libel, the signature of C. H. Newman to the verification of the libel, the signature of C. H. Newman to libelant's bond or stipulation for costs, the signature of C. H. Newman to amendment to libel, the signature of C. H. Newman to the verification to the same, the signature of C. H. Newman to the verification of replication, and the signature of Charles H. Newman to the verification of reply to amendment to amended answer, and particularly to the last signature mentioned, which are established and admitted signatures

of Charles H. Newman, the libelant and appellee in this case. I will also call to your attention and show you Appellant's Exhibit "B" and the signature "H. Newman" on the end and under the words "received payment" on the exhibit, and ask you to compare the signatures on the exhibit with the signatures that I have called your attention in the record, and state whether or not the signature on that exhibit are the same handwriting and written by the same person as the signature in the record?

A. I think they are. I think the same party wrote both the signatures.

Q. You have examined all the signatures in the record? A. I have seen them.

Q. Then, it is your opinion from your experience as a banker that the signatures "H. Newman" on Exhibit "B" is the same handwriting and was written by the same person as all the signatures "C. H. Newman and Charles H. Newman" to the documents in the record?

A. Yes sir.

Q. Now, I will show you Appellant's Exhibits "D" and "E" and call your attention to the signature "John Newman" on each of these exhibits and ask you to compare them with the signatures in the record that I have called your attention to, and state whether they were written by the same person and in the same handwriting as the signatures "C. H. Newman" and "Charles H. Newman" in the record?

A. The characteristics of the handwriting are the same as the other signatures, but I would not state positively that the same man wrote these.

Q. In your judgment the characteristics of the signatures on these exhibits and in the record are very similar? A. Yes, sir.

Cross-Examination.

Q. (Mr. MARTIN.) Have you not in your experience, Mr. Furth, seen handwriting by two different parties, having as much resemblance as the resemblance between the handwriting in the name Newman in Appellant's Exhibit "D" in the verification of the libel in the pleadings?

A. Not in this kind of writing. I have seen signatures that were very similar, almost impossible to tell them apart written by different people, but they were expert in writing. No man that writes a handwriting like this do we ever make a mistake on. There is something about it that I have never seen one man's writing write as poorly as this and another man's equally poorly that look alike.

Q. Now, Mr. Furth, if it were an expert that wrote the name on exhibit "D" and Appellant's Exhibit "B" for the purpose of imitating Mr. Newman's signature which is on the libel, are these names not written in the manner that an expert would try to write them and imitate them? A. No expert ever wrote this.

Q. How do you know?

A. Because an expert would not write that way.

Q. If it was his object to get the signature where parties could come in and testify it was the same handwriting as the name in the libel?

A. Oh, it is possible that a man may—

Q. Now, an expert would be particular to imitate it even by a little worse hand, would he not, for the purpose of making people believe it was the real signature?

A. That would not make it so, for there would still remain the characteristics about the original handwriting that a man will recognize.

Q. But it would have a tendency to convince the person in the first place that it was the same handwriting?

A. Possibly so.

Q. Now, an expert forger would know these matters as well as an expert banker, would he not, that these are characteristics which should be brought out to convince a person that this is the same handwriting?

A. No, sir.

Q. They would not?

A. No, sir. There is something about handwriting that is very hard to explain. A man who is in the habit of handling signatures and passing them, it strikes him at a glance if there is anything wrong about it, and then on closer examination he will find that either he was mistaken at his first glance or that he verifies his opinion.

Q. Now, I will ask you to examine the word "Newman" on Appellant's Exhibit "D," Mr. Furth, and state whether or not the first letter of the word "Newman" has any resemblance to the first letter of the word "Newman" in the libel? A. No, sir.

Q. None what ever? A. Not the first letter.

Q. How about the next one?

A. The "A" and the "N" are formed very much like the other, the same characteristics. The "N" has and the "W" has but, it might have been written with the

hand trembling; the "Wman" look alike in the signature.

Q. "M-a-n" look very much the same as in the signature? A. Yes, sir.

Q. Now, how about the signature to the libel of Newman. A. This signature is all correct.

Q. Is there not quite a difference between the name "Newman" to the libel and the name "Newman" on exhibit "D"?

A. Not a great deal, no.

Q. There is? A. The "N" is different.

Q. And there is quite a difference in the movement, is there not?

A. That might be accounted for by the way he holds his pen. This appears that his hand was not steady (on exhibit "D") and this one that his hand was steady (on the pleadings) the formation of the letters is identical.

Q. Now, if, on the other hand, Mr. Furth, the man that wrote this name "Newman" below "received payment" here, was a man engaged on a grade and strong and able to work, while the man that wrote the name "Newman" to the libel was a man who had his back broken and was lying on his face, unable to lie on his side or on his back even, and it was necessary to put a support under his chest in order to raise his body up sufficiently to write that word "Newman" to the libel, would that have any effect on you as to your opinion in the case?

A. This man being a strong man and this man a weak man?

Q. Yes, sir.

A. Well, this does not look to me as though it was written by a man who was—this first one (referring to

the libel)—it is written pretty plain and perfectly steady. This signature to the verification looks more nervous than the first.

Q. These were both written at the same time.

A. Very probably what may be this looks more nervous than the other. It does not require an expert to tell that, anybody can tell that. This one, when he wrote this, was steadier than this one. It may have been written the same day or within five minutes, still this looks more trembling.

Q. These were both written at the same time, within a minute, by the same pen.

A. That is true, but nevertheless his hand was not as steady as when he wrote the first one.

Q. And he was lying in the position that I have indicated to you. Now, this signature to exhibit "D" was written by a man who has been working on the grade, chopping and shoveling and wheeling a wheelbarrow.

A. Of course I don't know how able bodied he was.

Q. These are the facts. Now, you say that the signature here on the exhibit seems to be more nervous and weaker than the other?

A. I did not say weaker.

Q. More nervous?

A. A man may be nervous and be healthy. I have known times when I could write a steadier hand than at others.

Q. That is true.

A. And so with anybody else. But at the same time my signature will always have the same characteristics no matter how nervous I may be.

Q. Yes; but this signature on exhibit "D" shows a cramped and indecisive way of writing?

A. Not a cramped writing, the formation of these letters is exactly the same as the other, neither is cramped.

Q. They show that the hand moved slowly, do they not?
A. Yes, in both of them.

Q. Does the signature "C. H." show that the hand moved slower?

A. No, the "C. H." was written faster.

Q. With a free movement of the wrist?

A. Yes, sir.

Q. Do you find any such movement in the signature "Newman"?
A. Yes, "m-a-n."

Q. The, "m-a-n"?

A. Yes, perfectly free; not cramped at all.

Q. But you see the signature to the libel the "m-a-n" shows it is cramped, it is not as free as the first part of the name.

A. What do you call that?

Q. That is the libel. One is the verification.

A. This second signature to the libel seems to show that the man was more nervous when he wrote than the first one or that his hand was trembling where the other is more perfect, the letters are more perfectly formed in the first.

Q. But do not they show a freer movement and better penmanship than in exhibit "D"?

A. Yes, sir.

Q. They do?
A. Yes, sir.

Q. So that in that respect there is quite a little difference in the names in the way of writing?

A. In respect to the freeness of the hand?

Q. Yes.

A. As I stated before that might be brought about simply by the condition of the man's hand when he was writing.

Q. Can you tell from exhibit "D" the position the man held his pen when he wrote that name?

A. Well, no, I am not an expert in that.

Q. Can you from the signature on the libel tell how he held his pen and how the pen must necessarily have been held to produce the shades?

A. No, I would not venture to say how he held his pen.

Q. But you know that you must hold the pen in a certain position to make a certain shade?

A. Certainly, yes.

Q. And the signature to exhibit "D" could have been written by holding the pen in most any position, could it not?

A. Well, hardly.

Q. It could have been produced by holding it in an entirely different position from the way it must necessarily have been held when the name to the libel was written?

A. That is true, yes; I should say so.

Q. Do you notice that the word "Newman" in exhibit "D" is spelled "N-e-u-m-a-n" under the words "received payment"?

A. No, I think that is "N-e-w."

Q. Does it not look more like the letter "u" than "w"?

A. At first looking at it it looks like a "u" but when you come to examine it you will see it is a "w" and as near a "W" as a poor writer will make it.

Q. Do you consider the man who wrote the name

“Newman” here to all these pleadings a very poor writer?

A. Yes; I do not think that he is a good writer.

Q. Now, if a man’s handwriting which was written when he was in his normal condition shows that he was a good writer and wrote a much better hand than appears in these pleadings, and that the man who wrote exhibit “D” is a person who worked on the grade, that would make a difference in your opinion, would it not, as to who wrote these signatures?

A. No, sir, it would not.

Q. It would not? A. No, sir.

Q. What you mean to say is that these signatures could have been written by the same person?

A. Yes, sir.

Q. Do you mean to say that they could not have been written by two different persons?

A. I did not say that, sir.

Q. You would not say that?

A. No, sir. A man may forge another’s name.

Q. But even that could be written by two different persons without the party intending to forge another’s name? A. Well, I do not think so.

Q. It is not impossible?

A. No, not impossible.

Q. But you have seen handwriting by two different persons which resembled fully as much as the name “C. H. Newman” to the libel here and the word “Newman” under the words “received payment” on Appellant’s Exhibit “D”? A. I have.

Redirect Examination.

Q. (Mr. JUREY.) Does it appear, Mr. Furth, that the ink signatures to exhibit "B" and exhibit "D" were written with the same kind of a pen as the signatures in the record? A. As in this?

Q. Yes.

A. This (looking at libel) looks more like it was written with a sharp pen and this more like it was written with a stub pen (referring to exhibit "D.")

Q. If a man was attempting to forge the name by writing—from your knowledge of handwriting would he be apt to write with the same kind of a pen and just the same kind of ink that was used in the copy from which he was copying or would he be apt to use a different one? A. If he was trying to imitate it?

Q. Yes.

A. I should not think so, I never practiced that my-same pen if he wanted to be successful about it.

Q. If a person was attempting to copy or forge the name written in ink would he be apt to use a pencil?

A. I should not think so, I never practiced that myself.

Q. Did you see in the signature to these exhibits any of the characteristics or features of an expert penman?

(Referring to receipts.)

A. No, sir, they are not.

(Testimony of witness closed.)

Mr. M. B. HARBEN, recalled on behalf of the appellant, testified as follows:

Mr. MARTIN.—I object to putting the witness on the

stand so many times. Mr. Harben has been a detective and a standing witness and he has been called so many times I object to cumbering the record with his testimony.

Q. (Mr. JUREY.) Mr. Harben, you testified the other day that you accompanied Mr. Murphy, Mr. Martin, Mr. Kelly and myself with others to West Seattle?

A. I testified so, yes.

Q. You were in the room when Mr. Murphy was introduced to Mr. Newman? A. Yes, sir.

Q. Was the man that he was introduced to and spoke to the same man that you had testified to in this case as being Charles H. Newman?

A. Yes, sir, he is the same man that I had seen at different times.

Q. And he was in the same house that you have testified to?

A. Yes, the same house when I saw him at other times.

(Testimony of witness closed.)

Mr. MICHAEL KELLY, recalled on behalf of the appellant, testified as follows:

Mr. MARTIN.—I object; Mr. Kelly has testified and he told everything that he knew and they have had all the opportunity necessary to put in their direct examination.

Q. (Mr. JUREY.) Mr. Kelly, did you accompany Mr. Murphy, Mr. Harben, Mr. Martin and myself with others to West Seattle on the day that has been testified to here, and identify Mr. Newman, the appellee in this case? A. Yes, sir.

Q. Where you present in the room when Mr. Murphy was introduced to Mr. Newman? A. I was.

Q. Was the man that Mr. Murphy was introduced to and spoke to at that time the same man that you have testified to in this case as being Charles H. Newman?

A. Yes, sir, he was.

Q. Was it at the same place you saw him?

A. I saw him there once before and once at the boat.

Cross-Examination.

Q. (Mr. MARTIN.) You were present at the time that Mr. Murphy went into where Mr. Newman was?

A. Yes, sir, I was.

Q. You heard me introduce Mr. Newman to Mr. Murphy, did you? A. I did.

Q. You also heard me proceed to say to Mr. Murphy and to Mr. Newman; "Mr. Newman, this is the gentleman, Mr. Murphy, who says that you worked on that grade in March and April"?

A. Yes, you started in that way.

Q. What did he do, what did Murphy do then?

A. He turned and walked away.

Q. He went right straight out, didn't he?

A. Yes, sir.

Q. He would not and did not face Mr. Newman while I made that statement? A. He walked out.

Q. He turned around and walked out, did he not?

A. Yes, sir.

Q. And did not stand there before Mr. Newman and would not stand before him until I made my statement

so as to explain to Mr. Newman the reason of our being there. A. He did not stay there.

Q. He did not? A. No.

Q. He walked right out. You heard me request him to stand there and to wait?

A. Yes, the first part of the speech. You started in to tell him who he was and there was no waiting done, he turned and walked away.

Q. That is not what I asked you. (Last question read to witness.) To come back or words to that effect when he was going out?

A. You see I had got out, I was about the first one out of the room, perhaps I had got to the door, I did not hear you make any more statements.

Q. Did not you hear me make that demand in a loud statement to him?

A. There was three others traveling along after me, I was in the lead walking out.

Q. Do not you know that he refused to confront the witness or to confront Mr. Newman at the time that I stated that he had testified that Mr. Newman was working for him on the grade, and went right straight out and would not wait?

A. Well, at your first allusion he walked out; that is about as near as I can get at it.

Q. And you know he refused to wait and confront Mr. Newman while that statement was being made?

A. Yes, sir.

(Testimony of witness closed.)

Testimony on behalf of appellant closed.

Seattle, June 21, 1900.

Continuation of proceedings pursuant to agreement.

Present: William Martin, Esq., of proctors for appellee; J. S. Jurey, Esq., of proctors for appellant.

TESTIMONY ON BEHALF OF APPELLEE.

WILLIAM CRAEMER, a witness called on behalf of the appellee, being first duly sworn, testified as follows:

(At the request of proctor for appellant the witnesses for the appellee were excluded from the room during the giving of testimony on behalf of appellee.)

Q. (Mr. MARTIN.) State your name in full.

A. William Robert Craemer.

Q. Where do you live? A. At West Seattle.

Q. Are you acquainted with Mr. Charles H. Newman?

A. Yes, sir.

Q. The man that was injured in this case?

A. Yes, sir.

Q. You live in his house, do you not, Mr. Craemer?

A. Yes, sir.

Q. Have you been living there ever since he was injured? A. Yes, sir.

Q. I will ask you, Mr. Craemer, if Mr. Newman, Charles H. Newman, ever worked on the street grade over there in the month of March or in the month of April, 1900?

A. No, sir, I never seen him working. I have been home every day, though.

Q. What time would you leave home in the morning?

A. I would leave between half past eight and a quarter of nine.

Q. Every morning? A. Yes, sir.

Q. Where did you go then?

A. Go to school.

Q. How old are you?

A. Sixteen last birthday.

Q. Where would Newman be when you left home every morning?

A. I always found him in bed when I left there asleep.

Q. Was that true of every morning?

A. Yes, sir, every morning ever since he has been hurt.

Q. Did you go home for dinner?

A. Sometimes I did, but not very often.

Q. When you went home would you find Mr. Newman at home?

A. Yes, sir, always be at home.

Q. What time would you get home in the evening?

A. I would get home about half-past four or five o'clock.

Q. Did you find Mr. Newman home then?

A. Yes, sir, I would find him every time. He would be out for a walk sometimes.

Q. You may state Mr. Craemer, if you know whether Mr. Newman worked on the street car grade over there on the 14th of March, 1900.

A. No, I do not think that he did ever work; he never did that that I know of.

Q. Has he ever done any work of any kind since he has been hurt? A. No, sir, I have not seen him.

Q. Is he able to do any work?

A. I have never seen him do any work and I do not think he can.

Q. Was he home at half-past eight o'clock when you left to go to school on the 14th or 15th or 16th or 17th or 19th of March, 1900?

A. As near as I can remember I think he was. He was always there when I went to school.

Q. Every time? A. Yes, sir.

Q. Were you going to school at that time?

A. Yes, sir.

Q. I will ask you if he was at home on the 4th, 5th, 7th, 8th, 9th, 10th and 11th of April, 1900.

A. Yes, sir, I think he was. I was at school.

Q. Did you see him when you went away in the morning about half-past eight? A. Yes, sir.

Q. And you saw him when you came back at noon on the days that you did come back?

A. Yes, sir.

Q. And you saw him at half-past four when you came home, at that time he was in his own house?

A. Yes, sir.

Q. State whether or not he is required to use a steel jacket around his waist of any kind?

A. I saw him wear it every morning when he gets up.

Q. State whether or not he is in a crippled condition?

A. I think he is, he has always walked with a cane, and he is all the time saying something about his back.

Q. Does he complain of pain?

A. Yes, he complains of it quite a little.

Q. He was required to lie in bed a long time, was he not? A. Yes, sir.

Q. How long about?

A. I do not remember just how long it was.

Q. Up until a short time ago?

A. Yes, sir.

Q. Now, he has a boat over there, has he not.

A. Yes, sir.

Q. Was that boat painted?

A. Who painted that boat?

A. Well, I painted about half of it and another gentleman by the name of Charley Masculin painted the rest of it.

Q. Did Newman paint any of that boat?

A. No, sir, he did not.

Q. State whether or not Mr. Newman was boarding at home on the dates I have mentioned in March, and the dates I have mentioned in April, that is, if he took his meals at home? A. Yes, sir. He did.

Q. State whether or not if you know, if he was boarding down at Wells' during these times?

A. He never boarded there.

Cross-Examination.

Q. (Mr. JUREY.) Mr. Craemer, how old did you say you were? A. Sixteen last birthday.

Q. You are living at Newman's house?

A. Yes, sir.

Q. Are you any kin to him?

A. He is my brother in law.

Q. How long have you been living with him?

A. Well, somewheres around four years, I think.

Q. Where did you go to school?

A. West Seattle school.

Q. How far is that from Newman's house?

A. Oh, it is about a mile, I think.

Q. What time of day did school open in the morning?

A. At nine o'clock.

Q. Now, you say you were going to school during the months of March and April, this year?

A. Yes, sir.

Q. Every day?

A. Yes, sir, I never missed a day.

Q. What time did you say you left Newman's house to go to school?

A. Sometime between half-past eight and a quarter of nine.

Q. Now, you say you saw him at home every morning before you left?

A. Yes, sir, he was in bed every morning when I left for school.

Q. Every morning? A. Yes, sir.

Q. Can you recollect a single morning when you did not see him in bed when you left there?

A. No, sir, I cannot.

Q. Did you go to look and see if he was in bed?

A. Well, I went through the room every morning when I came downstairs.

Q. Specially to look and see if he was in bed?

A. Yes, sir.

Q. Now, you say he never worked on the grade over there? A. No, sir, he never did.

Q. How do you know that he did not?

A. Well, he could not have worked.

Q. Well, he might have worked on the grade after you went to school? A. No, sir.

Q. Why could he not. You simply say that he did not work on the grade because you think he could not, is that it?

A. Well, I would see him at home every morning and at noon and in the evening again.

Q. How do you know that he did not work on the grade after you went to school—simply because you think he could not? A. Yes.

Q. Now, is there anything particular that impresses upon your memory that you saw him in bed on the 14th, 15th, 16th, 17th, 18th and 19th days of March?

A. No, there is not, but I know I seen him at home every day.

Q. You say that you saw him home every morning that you went to school? A. Yes, sir.

Q. And there is nothing to impress it on your memory that you saw him on these particular mornings except that you saw him every morning?

A. No, sir.

Q. Now, was there anything to impress on your memory these particular days when you came home from school at home? A. No, sir, there is not.

Q. Now, is there anything that impresses on your memory the fact that you saw him at home on the 4th, 5th, 7th, 9th, 10th and 11th days of April last?

A. No, sir.

Q. Or that you saw him at home whenever you came home from school on these days?

A. No, sir.

Q. Now, you say you helped put paint on these boats of Newman's? A. Yes, sir.

Q. When did you paint them?

A. I do not know the date.

Q. You do not know what dates you painted on them?

A. No, sir.

Q. Do you know when Masculin painted on them?

A. Well, he painted the same days that I did, maybe he knows, I don't know.

Q. You don't know what date?

A. No, sir.

Q. You say that he painted the same days that you did.

A. Yes, sir, he painted the same days that I did.

Q. At the same time?

A. Well, we started on the first and then I went up to the house and he finished it.

Q. Painted it all in one day?

A. Yes, it was painted all in one day.

Q. What painting you and Masculin did there was done in one day? A. Yes, sir.

Q. Now, what date was that?

A. I do not remember the date.

Q. You do not know what date it was?

A. No, sir.

Q. Was it in the month of March?

A. It would be in the last part of March or the first of April.

Q. About the last week in March or the first week in April, would you put it?

A. I guess that is about it.

Q. Well, how do you know nobody ever painted on these boats except you and Masculin?

A. Because I was down there when it was done.

Q. You were not there when Masculin finished it up?

A. I was there until he had it pretty nearly all done.

Q. You were not there all the time?

A. No, not all the time.

Q. How do you know that someone else did not paint while you were there?

A. I do not think anybody did because they were not hired to do it.

Q. You do not know whether or not anybody painted it? A. No, sir.

Q. You say that Mr. Newman did not board at Wells' boarding-house on the 14th, 15th, 16th, 17th, 18th and 19th days of March? A. Yes, sir.

Q. Was there anything that impresses on your memory that he did not board there at that time?

A. Yes, sir.

Q. You do not know that he never boarded away from home?

A. No, sir, he never went away from home.

Q. Then, you say that he did not board there during these days simply because you think he never boarded away from home?

A. He has never boarded away from home since I have been out here.

Q. Did you see him take all of his meals at home?

A. I never seen him take his breakfast once.

Q. Did you ever see him take his dinner or lunch in the middle of the day?

A. I saw him have his lunch when I came home from school.

Q. You have seen him eat dinner when you came home from school?

A. I did not always come home from school; whenever I did I would see him.

Q. How often would you not come home from school?

A. Well, during pretty near the last term I would come home pretty nearly every day.

Q. Well, was there anything that impressed on your memory the fact that he did not take his meals at home during the days in March that I have mentioned?

A. No, sir.

Q. Now, is there anything that impresses on your memory that he did not take his meals at home during the 4th, 5th, 7th, 9th and 10th of April last?

A. No, sir.

Q. You simply believe that he did take his meals at home these days because you think he usually did, is that it?

A. Yes, sir.

Q. You say that Newman uses a steel jacket?

A. Yes, sir.

Q. What kind of a jacket is it?

A. I do not know that I have seen the jacket. I have seen him wear around his waist.

Q. You do not know whether it is a steel jacket or not?

A. I do not know whether it is or not, I guess it is.

Q. He wears something around his waist?

A. That is what he calls it, a steel jacket.

Q. He wears a steel jacket?

A. Yes, sir.

Q. You never examined it?

A. I never did.

Q. Who told him to wear a steel jacket?

A. I do not know, I suppose the doctors did.

Q. You do not know whether they did?

A. No, sir.

Q. When did Mr. Newman first get out of bed?

A. I do not remember just when it was.

Q. Just before Christmas?

A. It was about Christmas, I guess.

Q. You say that he got out of bed before Christmas?

A. I am not sure whether it was after or before.

Q. You are not sure about that?

A. No, sir.

Q. When did he first commence going out of doors?

A. It was after he got up, say a week, but I don't remember.

Q. You do not remember whether it was before Christmas or not? A. No, sir.

Q. Do you know whether it was before Thanksgiving or not? A. I do not remember.

Q. Do you remember whether it was before the first of September or not that he first got up?

A. No, he never got up before the 1st of September.

Q. He never got up before the first of September?

A. No, sir.

Q. When was the first time that he came over to Seattle? Before Christmas?

A. I do not remember.

Q. He frequently goes out, does he not, and takes long walks? A. No, sir.

Q. He has not been out for quite a long while lately?

A. No, sir.

Q. Heretofore he has been going out?

A. He has been told to go out by the doctors whenever he could.

Q. Had he started to walk in January or February?

A. I do not know when it was.

Q. Where would he take his walk?

A. He would walk around the house.

Q. Up and down the hill?

A. Once in a while he would go down to the dock.

Q. Now, when was the first time that he went down to the dock? A. Before we painted the boats.

Q. You do not know when it was?

A. No, sir.

Q. It might have been before Christmas for all you know?

A. It might have been, I don't know.

Q. Mr. Craemer, you made an affidavit, did you not, in this case along about the first of May, or the 9th of May?

A. Well, I do not know as I signed one.

Q. In your affidavit you said that Mr. Newman is required to wear a steel jacket; you do not know whether it is a steel jacket or not, do you?

A. Well, I have seen him wear it, I do not know whether it is a steel jacket or not.

Q. Did Mr. Newman ever do any work down in his shop? A. No, sir.

Q. He has a shop down on the beach, has he not?

A. Yes, sir.

Q. How do you know that he did not do any work there?

A. I would be down there nearly every time that he would go down and I would not see him do any work.

Q. While you were at school you do not know where he went, do you?

A. I nearly always went down in the afternoon, after school.

Q. He could have gone down and worked at his shop?

Mr. MARTIN.—I object to this style of cross-examination.

Q. While you were at school could not he without your knowing it? A. Yes, sir.

Q. Then, you do not know whether he worked at the shop or not?

A. He never worked while I was down there.

Q. You simply do not know that he worked at the shop, that is it? A. Yes, sir.

Q. Mr. Craemer, Mr. Newman has told you that he was a cripple, has he not, and talked to you that way?

A. Yes, sir.

Q. You never examined him to see?

A. No, sir.

Q. All you know about it is what he tells you?

A. Well, all I know is what he tells me, but I see him walk around and I know he is a cripple.

Q. By the way he acts? A. Yes, sir.

Redirect Examination.

Q. (Mr. MARTIN.) How many rooms are there downstairs in Mr. Newman's house?

A. There are three rooms downstairs besides the living room.

Q. You used to go through his room when you went downstairs in the morning? A. Yes, sir.

(Testimony of witness closed.)

LEN WELLS, a witness called on behalf of the appellee, being first duly sworn, testified as follows:

Q. (Mr. MARTIN.) Where do you live?

A. West Seattle.

Q. How long have you lived over there?

A. I have lived over there five months.

Q. You were living over there during the months of March and April, 1900?

A. Yes, sir.

Q. Do you remember the men that worked with Murphy in the months of March and April, 1900?

A. Yes, sir. That is, let me see now—

Q. You boarded some of them during these times?

A. Yes, sir.

Q. I will ask you whether you are acquainted with the appellee in this case, Charles H. Newman?

A. Yes, sir, I am now.

Q. I will ask you if he boarded with you any time in the months of March or April, 1900?

A. No, sir, he never did. He never boarded with me to the best of my knowledge.

Q. If he had boarded with you you would have known it, would you not? A. I think so, yes sir.

Q. I will ask you if there was a man boarding at your place during these times, who went by the name of Newman?

A. Well, I have his name on my book as H. Newman, but I could not call the man to memory because there were so many there at the time.

Q. I will ask you to examine Appellant's Exhibit "E"

and state if that is your signature to the bottom there, as receiving payment?

A. Yes, sir, that is my signature.

Q. I will ask you if Charles H. Newman, the appellee in this case, the man that was injured, signed that name on the end there?

A. Well, about these checks. You will understand that I was not there all the time, and the bartender, if I was not there, he answered the same purpose as me, and of course I could not say because there were so many of these checks that Murphy—I could not say whether I was in town or whether I was in the saloon. In fact I was often in bed, and if a man came up in the morning—I would be up very late at night, and these checks would be given and I would never see them until they were taken to the office.

Q. So that what you mean to say is that check might have been delivered to you when you were not present?

A. Yes, sir.

Q. And for that reason you could not swear who signed on the end? A. No, sir, I could not.

Q. That is what you mean to say, is it?

A. Yes, sir.

Q. But you do know Charles H. Newman, the appellee, never boarded with you there? A. Yes, sir.

Q. That check was for board at your place, was it not? A. Yes, sir.

Q. I will ask you if you have ever seen this gentleman here, Mr. Harben? A. Yes, sir, I have.

Q. I will ask you if he has not been over trying to get witnesses and to get you to swear this man Newman did board with you?

A. Well, he has been over several times asking me before I knew the gentleman if I knew such and such a man as Newman, and I told him that I did not recollect him at the present time. I did not know this man Newman but I told people who he could go to that were living over there that he could find out, so I referred him to them. Of course I do not know the result of what he got from them.

Q. Did not he ask you to testify in this case that this Charles H. Newman who was injured had boarded with you?

A. Well, he asked me if he had ever been boarding there and I told him at that time that I had not seen Newman lately, and after I went and seen him I told him that he had not boarded there that I ever knew of, I could not call him to memory.

Q. You have gone and seen Charles Newman?

A. Yes, sir.

Q. Up at his home? A. Yes, sir.

Q. And if that signature which appears on the end there John Newman was signed in your presence, you can swear it was not signed by Charles H. Newman?

Mr. JUREY.—I object because the witness has already testified it was not signed in his presence.

A. I say that I do not know, that is right. This check might have been signed when I was not there. I could not swear to that at all, because there was a number of these checks given when I was not there. If this check had been given when I was there by this man Newman I would surely remember him, but there were so many of these checks given when I was not there of course I could not swear to that.

Cross-Examination.

(Mr. JUREY.) Mr. Wells, a good many of Mr. Murphy's men were boarding with you at that time, were they not? A. Yes, sir, a good many.

Q. And you say that you were not always around in person? A. No, sir, I was not.

Q. You had a couple of bartenders to look after the business in your absence.

A. Well, yes, they were always near there. Now, the man who was there first, Tommy Murphy—he is in Cape Nome now—he knows this man Newman very well, and that is his signature that is on my book. He wrote this man Newman's name H. Newman, and that is his signature.

Q. (Mr. MARTIN.) Tommy Murphy wrote Newman's name? A. Yes, sir.

Q. Is that Tommy Murphy's writing on there, did he write that "H. Newman"—is that his signature?

Mr. JUREY.—I object for the reason that no foundation has been laid for the identification of that signature.

A. That is not Tommy Murphy's signature; I can state that. (Referring to exhibit "B.")

Q. Where did Tommy Murphy write Newman's name? A. On my book.

Q. You do not know whether he wrote that on there?

A. No, he would not write his name on any of these checks.

Q. He wrote his name on your book?

A. Yes, sir.

Q. (Mr. JUREY.) You do not mean that Murphy wrote Newman's name on the time check?

A. Oh, no, he did not. Murphy never wrote his name on any of the time checks because the time checks were given to me and I kept them a certain time and I would take them over to the office when I was going over there.

Q. (Mr. MARTIN.) Do you know who wrote either of these signatures on either of these checks?

Mr. JUREY.—I object because no foundation has been laid.

A. I do not know, no sir. (Referring to exhibits "D" and "B.")

Q. (Mr. JUREY.) Mr. Wells, it is possible that a man might board at your house without your recollecting him, is it not? A. Well, yes, it is possible.

Q. Do I understand you to say that Mr. Newman, the appellee, did not board at your place, or simply that you do not recollect that he boarded there?

A. This man Newman that lives on the hill never boarded at my place I am quite sure of that?

Q. Why are you sure of that?

A. Because the man has been pointed out to me before this some few months ago he was pointed out to me once passing, and I am very sure that he did not board there. To the best of my knowledge he never boarded there.

Q. In March or April?

A. In March or April, yes.

Q. Are you positive he did not?

A. Yes, I am positive that he never boarded there.

Q. You say that the time check that is signed by Newman that you just looked at, was not signed in your

presence and that your barkeeper took the check. Is it not possible that the man who signed that check might have escaped your notice, as you did not look after him particularly.

A. Well, I am positive that this man that lives on the hill never signed this check for this man Newman.

Q. I say, is it possible that as the man signed that check in the presence of your barkeeper and not in your presence, that he might have been there without your knowing it, as you did not deal with him personally. I say is it possible that he might have been there.

A. Well, it hardly seems possible to me after seeing the man on Sunday and having him called to my memory, it hardly seems possible that the man would board there without my knowing it.

Q. But still it would be possible, would it not, for him to board there a few days without attracting your notice if the barkeeper dealt with him instead of yourself.

A. It would not be possible for him to board there on the date of the 13th, because I can call to mind the men that were working on that bunk-house at that time; I am positive this man Newman was not there.

Q. Could not he have boarded there on the 12th and 13th is it not possible that he could?

A. I do not think it is possible that he could have boarded there because there was so few men boarding there at that time, there were not five men boarding there from the 13th to the 19th. There were four or five men, I would not say exactly, but I could swear positively who the men were in person.

Q. You swear positively that you did not see them in person?

A. I could swear who the men were in person—I can swear to all the men that were boarding there.

Q. If you saw them in person? A. Yes, sir.

Q. Now, are you sure that only five men boarded there during that time, between the 13th and the 19th?

A. I will not swear positively, no; but I think in the neighborhood of four or five men.

Q. Can you name the parties who boarded there during that time?

A. Well, I can—there was Solsberger and this man H. Newman, and I do not know as I can call them off all of their names.

Q. You do not pay very particular attention to the personnel of your men?

A. Well, I did not pay particular attention, more than I always do around there. I am always around at the noon hour, at the dinner hour.

Q. If you got your board from them, that was the particular thing?

A. That was the main thing that I was looking after.

Q. Did a man by the name of Barker board there during that time? A. Yes, I believe there was.

Q. Was there a man by the name of Waldron?

A. Yes, sir.

Q. And a man by the name of Crume?

A. I do not remember him?

Q. You do not remember him? A. No.

Q. A man by the name of Remington?

A. Well, there was seventy-five or a hundred of them—seventy-five anyway boarded there, but I could

not tell you whether they were all boarding there, and what time they were boarding there.

Q. Between the 13th and the 19th.

A. Between the 13th and the 19th I could not call to memory the men by hearing the names that boarded there in such a short space of time.

Q. Was there a man named Engle boarding there during that time.

A. I do not remember whether he did or not.

Q. A man by the name of E. T. Thurman?

Mr. MARTIN.—You could tell from the books the men who were there?

A. Yes I could tell all the men that were there.

Q. (Mr. JUREY.) Have you your books in court?

A. No, sir.

Q. Could you produce your books this afternoon, Mr. Wells? A. Not very well, I could not.

Q. A man by the name of Harris?

A. They must have boarded there some time or other.

Q. Boarded there between the 12th and 19th of last March? A. I could not say as to that.

Q. Antone Nichols, did he board there at that time?

A. I could not say, I do not know.

Q. G. Martinson?

A. I could not say whether he boarded there or not.

Q. J. A. Hanson? A. Hanson boarded there.

Q. And F. Feurst?

A. I do not remember about him.

Q. In between the 13th and the 19th of March?

A. I could not tell you.

Q. F. Timmon, did he board there during that time?

A. I could not tell you that either.

Q. And W. Sommers, did he board there?

A. I could not say as he did.

Q. Well, you had a good many men boarding with you at that time?

A. During the time that we were there, yes.

Q. I mean between the 13th and the 19th of March?

A. No. There was somewheres near four or five men.

Q. You are sure of that? A. Yes, sir.

Q. Do you not remember all of Murphy's men?

A. Yes, but they all did not commence to work between the 13th and 19th.

Q. You boarded all of his men that were working there between those dates.

A. I do not know whether I did or not.

Q. You do not know?

A. No. He had some men boarding at the restaurant.

Q. Did not you and Harben examine your books as to the men that boarded there between the 13th and the 19th of March?

A. He came over there a number of times from town; he did not, Murphy did.

Q. Did not you and he run over the names of the men that boarded there with you between the 13th and the 19th of March and compare the names on the list that he had of the men?

A. Well, there was no special date, we just ran over the names, but there was no special date—that they boarded between the 13th and the 19th.

Q. You are sure of that?

A. Yes, sir, there was no such a date. But we ran over the names.

Q. How far does your book go, to what date?

A. I do not know, I do not just remember.

Q. Was it to the 4th of April?

A. I do not just remember; we had it looking at it.

Q. Do you not recollect whether it stopped at the 4th of April or not? A. No, I do not remember.

Q. Did not you and Mr. Harben and Mr. Murphy, about two weeks ago in your back room, check off the names on your book with a list that Harben had?

A. All the checking that was done was checking off this man Newman's name clear down to the last. There was no particular date mentioned at any time, simply wanted to look at all the names.

Q. Did not they check your list of names with the list that they had there?

A. They checked all that he has got there.

Q. All that I have named?

A. Yes; well, I guess all you have named. He checked the names on the book, at any rate.

Q. Were these not the names of the men that boarded with you between the 13th and the 19th of March?

A. There were not that many boarding with me.

Q. You are sure of that? A. Yes, sir.

Q. I do not mean that the whole of these men boarded the whole of the time, but were not these men boarding with you at some time between the 13th and the 19th of March, the names that I have called?

A. No, sir.

Q. Not that many? A. No, sir.

Q. How many men were boarding at your house?

A. The most that ever boarded there at any one time?

Q. I do not mean at any one time, but boarded at your house on Murphy's work between the 13th and the 19th of March, how many different men?

A. I do not think there were more than five.

Q. During that time? A. Yes, sir.

Mr. MARTIN.—I object to the proctor cumbering the record; it is simply a repetition.

Q. Mr. Wells, your books would show exactly what men had boarded at your place, would they not?

A. Yes, sir.

Q. Will you produce these books this afternoon and testify after refreshing your memory from them?

A. I could not very well; there is nobody to watch the place, and my wife is sick and I do not want to leave her so long.

Q. Could not you produce them Saturday; I do not mean to put your books in evidence unless the appellee insists upon it, but simply to refresh your memory and testify as to how many men were boarding with you on Murphy's work between the 13th and the 19th of March?

A. I do not know. If my wife was so that I could get away, I might, but if she was not I could not.

Q. Then, do you decline to produce your books in court?

A. Oh, no, I would not say that I would not.

Q. Well, will you do so on Saturday?

Mr. MARTIN.—If you will pay his witness fees, I presume he will do so; there is no objection that I know of; I am sure I haven't any.

A. I will, provided that I can. If everything is satisfactory at home.

Q. That is the only answer you will make?

A. Yes, sir.

Q. Now, can you name the four or five men that you say boarded with you between the 13th and the 19th of March?

A. Well, no, I cannot, because there were so many that boarded there only for a short time; there was only one man that boarded there for four or five or six weeks. Mr. Solsberry, or a name something like that, and he is, I believe, the only man who boarded there for about four or five weeks.

Q. You got well acquainted with him?

A. Well, yes, I got well acquainted with him.

Q. Now, Mr. Wells, is it not a fact that you did not pay very much attention to the men who boarded there, but simply kept their time and got your pay?

A. I simply paid enough attention to that so that I knew that I got my pay. I would see them at the noon hour and at dinner time.

Q. You have kept track of them for the purpose of identifying them or anything of that kind?

A. No, sir, I did not.

Q. You left your business in the hands of your bartender frequently, and is it not possible that a man might board there two or three days or three or four days, and you not recollect it, providing there was a discrepancy in your accounts?

A. Well, it might be possible but it is not possible that the first four or five men that boarded there did, I would swear to all of them if they were present.

Q. Will you describe the man Newman who boarded with you in March?

A. I cannot describe him.

Q. Well, can you describe the man Newman who boarded with you in April? A. No, sir.

Q. But a man named Newman boarded with you in April? A. In April?

Q. Last April?

A. I had a man by the name of Newman on my books.

Q. For April? A. I think it was April.

Q. Do you recall the man to mind, his identity?

A. If he were present, yes.

Q. Do you without his being present, his identity?

A. Well, I do not think so.

Q. You could not describe him, then?

A. No, I do not think I could.

Redirect Examination.

Q. (Mr. MARTIN.) You say that you could pick out the four or five men that worked for Murphy when you first started there?

A. If they were present I could swear to all of them.

Q. And they were the parties that worked on the bunk-house, some of them, were they?

A. Yes, sir.

Q. Was Charles H. Newman, the appellee, one of this four or five, this Charles H. Newman that was injured?

A. No, sir.

Q. If that signature on Appellant's Exhibit "E" was signed in your presence I will ask you if it was signed by some other person than Charles H. Newman, the appellee?

Mr. JUREY.—I object for the reason no foundation has been laid and the witness testified he never saw him sign it.

Q. I will ask you if that was signed in your presence, Mr. Wells, if you know whether or not Charles H. Newman, the appellee, the man who was injured, signed that?

Mr. JUREY.—I object to the witness testifying because he stated it was not signed in his presence.

A. Well, of course, as for that, if this man Newman signed it, the man who was injured, I could swear to that.

Q. That is what I mean, did he sign that, the man that was injured, in your presence?

Mr. JUREY.—I renew my last abjection.

A. No, sir, he did not.

Q. (Mr. JUREY.) Do you know Charles H. Newman's signature? A. I do not.

Q. How do you know he did not write that?

A. Not in my presence, I say.

(Testimony of witness closed.)

Mr. A. L. WEAVER, a witness called on behalf of the appellee, being duly cautioned and sworn, testified as follows:

Q. (Mr. MARTIN.) Where do you live?

A. West Seattle.

Q. Are you acquainted with Charles H. Newman, the appellee? A. Yes, sir.

Q. Known him for some time? A. Yes, sir.

Q. Is your place near where Murphy's men were putting the bunk-house in? A. Very near.

Q. Did you see the men that were putting the bunks in? A. I did.

Q. In March? A. I did.

Q. I will ask you if Charles H. Newman assisted in putting these bunks in? A. He did not.

Q. I will ask you whether he is in a crippled condition, if you know? A. At the present time?

Q. Yes.

A. He is to the best of my knowledge and belief.

Q. I will ask you, if you know, whether or not you think he will ever be able to perform any manual labor?

Mr. JUREY.—I object for the reason that no foundation has been laid for such testimony. That testimony requires an expert.

A. I do not think that he will for a good many years,

Q. Does he have the appearance of a man that would be able to perform work?

A. Not very soon, not for years, no.

Q. Does he have the appearance of being crippled?

A. He certainly is crippled.

Cross-Examination.

Q. (Mr. JUREY.) What is your business, Mr. Weaver?

A. Well, at the present time halibut fishing. At the time that Newman was supposed to be on these bunks I was with the Oceanic Packing Company as superintendent.

Q. You had nothing to do with Murphy's contract?

A. Nothing whatever.

Q. You say that Charles Newman, the appellee, did not work on this bunk-house?

A. He did not work there.

Q. How many men worked on this bunk-house?

A. Four or five. I was in there two or three times while they were at work, and sometimes there was four

or five of them hammering away, and sometimes two or three, but I saw them each day. My business was right there and I saw them. I was at that time with the Oceanic Packing Comany, and I saw them every day.

Q. What days were they working on this bunk-house?

A. What days?

Q. What days of the month?

A. I could not tell you exactly the day of the month, but sometime in March.

Q. You do not recollect the exact date?

A. No, I could not recollect the exact date.

Q. Now, do you know all the men who worked on this bunk-house? A. I knew none of them.

Q. Did you pay particular attention to who was work-on them?

A. Well, I went in and talked with the men and asked them what they were going to do, and they were passing remarks what they were doing it for, and why the bunks were being built.

Q. You had no interest in the bunk-house?

A. None whatever.

Q. You had no particular reason, other than that of curiosity to look after them and talk with them?

A. Mere curiosity. At that time I was connected with the company and naturally was interested in any proceedings going on on our property, and out of curiosity to know that there was no harm being done, I was in there.

Q. Do you know how many days they were working on the bunk-house?

A. Yes, I remember; three or four days.

Q. You have not a very distinct recollection as to the number of days? A. Not the number of days.

Q. Did you ever go inside of the bunk-house after the first day?

A. Yes, sir, I was in there two or three times.

Q. How far is your place of business from the bunk-house? A. A hundred feet.

Q. You say you knew none of the men working there?

A. They were strangers to me.

Q. How long have you known Mr. Newman?

A. About two years now.

Q. Well, were you working for the Oceanic Packing Company and connected with it in April, 1899?

A. April, yes I was with the company.

Q. At the time the brigantine "Blakeley" was injured in the collision with the "Homer"?

A. I was on the ship at the time—not at the exact time of the collision, but I was connected with the ship; I was a member of the ship's crew at that time.

Q. Did you testify? A. I did not testify.

Q. Mr. Weaver, you say Mr. Newman is a cripple, how do you know it.

A. He has been in the warehouse quite often during my connection there, since his injury, since he has been able to get around and I shook hands with the man and occasionally would slap him on the shoulder and each time he would evidently feel a shock of pain, and once in awhile he told me to be easy. And judging from that fact the man certainly is in a pretty bad condition. It gives him pain if he is shook up, and I have watched him around the warehouse often in there and he could not

bend over or take hold of anything heavy, or anything of that sort.

Q. Well, would he attempt to take hold of anything heavy?

A. Occasionally he would undertake to lift an ax or bend just a little and he would complain, and he never could do it.

Q. You never examined him? A. Oh, no.

Q. Then, you simply use your own opinion from what you have seen and what he has told you?

A. Yes, and from what I have seen of him.

Q. From what you have seen and what he has told you? A. Yes, altogether.

Q. When did you say you quit the Oceanic Packing Company?

A. The first of May, the first day of May.

Q. Then, you have seen Newman around quite frequently?

A. No, not lately, not so frequently lately as I did when I was connected with the company. I saw him nearly every day, at least three or four times a week at that time.

Q. When was that? A. In April and in March.

Q. He was down around there at that time a good deal?

A. Two or three times a week certainly.

Q. He was down on the wharf? A. Yes, sir.

Q. Your place is down on the wharf?

A. Yes, sir; he has a little building along next to the packing house and he was usually in there, and he would generally come in and see me.

Q. Did you see him much prior to that time, prior to April? A. Yes, sir.

Q. What time? A. In March.

Q. Prior to March?

A. I would not be positive as to when he did get out, but I am quite sure that he was out in February.

Q. In February? A. Yes, sir.

Q. Do you think it was earlier than that?

A. I could not say how much earlier than that, if at all.

Q. Was it along in the early part of February?

A. I think the middle of February at the time that I saw him out.

Q. He was down on the wharf then? A. Yes, sir.

Q. Was walking around, no one assisting him?

A. With two canes. He had assistance to get up the hill the first time that I saw him someone assisted him up the hill.

Q. Who was it that assisted him?

A. I could not tell you now, I think it was Judge Coombs, but I would not be positive who it was.

Q. Do you know Mr. Michael Kelly? A. No, sir.

Q. Were you with the Oceanic Packing Company about the 23d of April, last April.

A. Yes, sir.

Q. Do you recollect anyone coming there about the 23d of April and inquiring for Mr. Newman?

A. I had several inquiries for him.

Q. About that time, do you recollect some called for Mr. Newman and asked after Newman—Newman's shack is right near your place? A. Yes, sir.

Q. Do you recollect calling out to Newman to see if he was there? A. I believe I did.

Q. About the 23d of April?

A. Yes, I think I did.

Q. And Newman was in his shop at that time?

A. I remember calling out to him once, it was in April, about the latter part of April, and asking him if he was in there.

Q. He was there?

A. To the best of my recollection he was, and he walked in the adjoining shed.

Q. Did he frequently come down to his shop during the month of April?

A. In April he was there at least three times a week, not quite so often in March.

Q. Do you know of his coming over to Seattle at any time?

A. Yes, I saw him once or twice when he came off the boat.

Q. What time was that?

A. This was in April.

Q. Did you see him coming off the boat prior to that time? A. No, I did not.

Q. You do not recollect that?

A. No, sir.

(Testimony of witness closed.)

CHARLES MASCOLIN, a witness called on behalf of the appellee, being first duly cautioned and sworn, testified as follows:

Q. (Mr. MARTIN.) State your name?

A. Charles Mascolin.

Q. Where do you live? A. At West Seattle.

Q. Are you acquainted with Charles H. Newman?

A. Yes, sir.

Q. Did you ever do any work for Charles H. Newman?

A. Yes, sir.

Q. What was it?

A. Painting a boat, a steamer on the wharf.

Q. What did you do to the boat?

A. I painted both the boats.

Q. Painted two? A. Yes, both of them.

Q. Who assisted you in painting the boats, if anybody? A. No, sir; the boy helped me.

Q. The boy that was here? A. Yes, sir.

Q. That is, Mr. Craemer?

A. The young fellow there, yes.

Q. Did Charles H. Newman do any painting on that boat?

A. No, sir, nothing; I done it all myself.

Q. He paid you for it, did he?

A. Yes, sir.

Q. Did you finish the job? A. Yes, sir.

Q. Did Charles H. Newman look to be in a crippled condition or hurt?

A. I think he is crippled, I suppose he is or he would not ask me to do that job, that is all.

Q. Have you ever seen Newman do any work?

A. No, sir.

Q. Can he do any work?

A. No, sir. I am right on the waterfront there and I did not see him do anything.

Q. Did you see the men putting the bunks in the bunk-house for Murphy's men? A. No, sir.

Q. Where did Murphy's men sleep?

A. I could not state, I never seen the men there.

Q. Did you see some men working there putting in some bunks for Murphy's men to sleep in there in March?

A. No, sir.

Q. Did you see other men working there on the bunks?

A. No, sir. I did not take any notice of that; Murphy was there, I know that, for quite a while.

Q. Do you know whether Charles H. Newman was working on these bunks?

A. No, sir.

Q. If he had been working there you would have seen him?

A. Certainly, I could not help but see him.

Cross-Examination.

Q. (Mr. JUREY.) What boats did you paint for Mr. Newman?

A. I painted both boats.

Q. What boats were they?

A. I do not know their names.

Q. What kind of boats were they?

A. A sloop and a steamer.

Q. Were these the only boats that he had there?

A. That is all.

Q. You painted them both?

A. Certainly.

Q. Did you do all the painting?

A. Yes, sir.

Q. All of it?

A. All of it.

Q. Did Craemer help you any?

A. No, sir.

Q. He did no painting?

A. No, sir, I done it all myself.

Q. Then, if Craemer says he did any painting he told what was not true? A. I done it all myself.

Q. Did you paint them all in one day?

A. I took my time.

Q. How long did it take you to paint them?

A. I could do it in one day anyhow, but I painted them.

Q. How many different times did you paint them?

A. Twice.

Q. When did you paint them?

A. It was somewheres close to April, I think.

Q. Do you know when you painted them?

A. Well, no.

Q. Do you know when you painted the boats?

A. Yes.

Q. What days?

A. What date, I don't know. I don't know what date I was born.

Q. What month did you paint them in?

A. We can find that out all right enough.

Q. What month did you paint them in?

A. Some time in April.

Q. April?

A. I kept no time myself.

Q. Some time in April?

A. Some time like that.

Q. You do not remember the date?

A. No, I don't know the day I was born either.

Q. But you were painting them on two different days?

A. Yes, I painted two different days.

Q. You commenced painting one day and then you left?

A. I took care of the boat, the whole business?

Q. When did you finish, the next day?

A. I finished in two days.

Q. Did you finish the painting the next day after you commenced? A. I painted right there.

Q. You do not remember when you painted them?

A. I was not there at all, I was somewhere else.

Q. When you painted them?

A. Yes, I am right there.

Q. How do you know that someone else did not paint some while you were away?

A. That anybody else did?

Q. They could not do it? A. No, sir.

Q. Why could they not?

A. I was by there myself.

Q. You were not there while you were away?

A. I painted them.

Q. Did you leave the boat while you were painting?

A. I left my house now and I am right here.

Q. Did you leave the boats while you were painting them? A. Yes, sir.

Q. How do you know that someone else did not paint while you were away? A. Nobody—

Q. Why could they not?

A. No, sir, they could not do it because I am right there, I sleep in the house right back there.

Q. You said that you were away from the boat while you were painting? A. No.

Q. Stayed there all the time?

A. Stayed all night. I was right there.

Q. Did you leave the boats from the time you commenced painting until you finished them?

A. Yes, that is exactly right. The same old place yet.

Q. How large is the steamer that you painted?

A. You ask that question?

Q. Is it a big boat? A. A small boat.

Q. How many coats of paint did you put on it?

A. Two coats.

Q. All over it? A. All over it.

Q. About how long is the steamer?

A. It is pretty good.

Q. A very good sized one, is that right?

A. That is correct, that is right. It is big enough to keep you awake.

Q. How large was the other boat?

A. A small one, it was a yacht.

Q. About how long was it?

A. I do not know, I never measured it.

Q. Pretty good length was it?

A. Well, yes, that is all right.

Q. How many coats did you put on that?

A. One coat.

Q. Just one coat? A. Yes, sir.

Q. Were there any more coats put on it?

A. Yes, well, we gave it one coat the year before—is that all you want?

Q. After you finished painting these boats you left them, didn't you? A. No sir, right there.

Q. Stayed right there? A. Yes, sir.

- Q. Night and day? A. Yes, sir.
- Q. Never left them? A. No, sir.
- Q. Cooked and ate there? A. Yes, sir.
- Q. You never left the boats at all? A. No, sir.
- Q. How did you get over here?
- A. I could not help it, I am just—
- Q. You did not leave the boat until after you finished painting them? A. Yes.
- Q. How long did you stay there?
- A. I am right there.
- Q. There yet? A. Yes, sir.
- Q. Now, you did all the painting in two days?
- A. Yes, sir.
- Q. How much did you do the first day?
- A. Have you got a brush? I am with you on painting.
- Q. How much did you paint on these boats the first day? A. Everything is correct.
- Q. How much? A. How much can I paint?
- Q. How many hours did you paint the first day?
- A. Well, I took my laborer's wages.
- Q. How many hours did you paint? How many hours did you work?
- A. I painted before the tide came in.
- Q. How many hours.
- A. That is just about a day's work.
- Q. You painted how long.
- A. On this work?
- Q. The first day? A. Yes.
- Q. How much did you paint the next day?
- A. Just about a day's work.
- Q. Then you painted both of these boats in two days?

A. Yes, sir.

Q. You know Mr. Newman very well, do you not?

A. Yes, sir.

Q. You and he are very good friends?

A. Yes, sir.

Q. What is your business? A. Fishing.

Q. You are a fisherman?

A. Sometimes I am idle, I tackle anything.

Q. You live over at West Seattle? A. Yes, sir.

Q. How long have you known Mr. Newman?

A. Ever since he came in.

Redirect Examination.

Q. (Mr. MARTIN.) You live in a bunk-house right next to the boat? A. Yes, sir.

Q. And these boats have been there all the while, these boats of Newman? A. Yes, sir.

(Testimony of witness closed.)

J. A. COX, a witness called on behalf of the appellee, being first duly cautioned and sworn, testified as follows:

Q. (Mr. MARTIN.) Where do you live, Mr. Cox?

A. Over in West Seattle.

Q. Are you acquainted with Mr. Charles H. Newman, the appellee in this case?

A. I have seen him a few times.

Q. You were working on the street-car grade over at West Seattle in March, were you not?

A. Yes, sir.

Q. You were foreman there for Murphy?

A. Yes sir.

Q. I will ask you if this man Charles H. Newman, the appellee, worked on that grade there from the 12th to the 19th of March?

A. You mean that man that got hurt on the brig "Blakeley"?

Q. Yes, sir.

A. No, sir, he never worked there while I was there.

Q. You were in charge of the men there between the 12th and the 19th of March, were you not?

A. From the 15th to the 20th.

Q. Of March? A. Yes.

Q. And you are positive that he did not work there then?

A. No, he did not work there at that time.

Q. Were you in charge on the 4th, 5th, 7th, 8th, and 9th of April? A. No, sir.

Q. Now, is there a man working there who gave the name of H. Newman?

A. Well, there was a man, I think—not H. Newman, I have forgotten— (Witness examines paper.) This is the only name that I could get, it was "Vars" or "Varrs."

Q. Did you put the names down of the men that were working there?

A. I got some of them on the first day; he was the man I had the first day.

Q. Well, did he tell anybody that his name was Newman? A. Not that I am aware of.

Q. Was not there some man working there who gave his name as Newman who had some other name?

A. Well, that I don't know about, I kept the time but one day.

Q. This fellow that had the name of Varrs gave his name as Newman too, did he not?

A. No. I did not get the name of Newman. It was either Varrs or H. Nears or Varris, I think I made a mistake, Varris and Nears are very near the same.

Q. Was there any other man working there who pretended to be the man that got hurt on the brigantine "Blakeley"?

A. No, sir, not that I am aware of.

Q. You are positive that this man who got hurt on the Brigantine "Blakeley" never worked for you?

A. No, sir, I never seen the man there at all; I saw him down on the county road at the time that I was working for Cooper, that was in April.

Q. If this man, Charles H. Newman, that got hurt on the "Blakeley" had worked there you would have known it, would you not?

A. Oh, yes, I would have known it, sure.

Q. You were foreman there on that grade?

A. Yes, at that time.

Cross-Examination.

Q. (Mr. JUREY.) How long have you known Mr. Newman, Mr. Cox, the appellee?

A. Since some time in April. I think it was somewheres about the 13th, along about the 23d somewheres about that time in April.

Q. You did not know the appellee, Charles H. Newman, prior to that day?

A. No, sir, not prior to that date.

Q. How many men had Mr. Murphy working for him at that time? About between the 13th and 19th of March?

A. I think he must have had somewheres in the neighborhood of ten or twelve; they were kind of commencing. There might be a mistake in a man or two of course, I do not know for sure. There were some quitting and then we got some new men.

The men were all working right in one place on this grade, or were they scattered out?

A. All the men that I had charge of were working pretty close together.

Q. Mr. Murphy was around a good deal during the time, was he not? A. Yes, sir.

Q. During the month of March?

A. Yes, sir, he was around sometimes once a day and sometimes twice, and sometimes three or four times.

Q. Where did Murphy's men board, that were working with him?

A. Well, I think some told me they were boarding at the hotel and some were boarding at the restaurant.

Q. Do you know where they boarded?

A. I do not know for sure where they all boarded.

Q. In March? A. Yes, in March.

Q. Do you know where they boarded in March?

A. I think some boarded at the hotel, I do not know.

Q. What hotel? A. West Seattle Hotel.

Q. Did any of them board in the restaurant in March? A. Well, I do not know for sure.

Q. The hotel you refer to is run by Mr. Wells?

A. Yes, that is one.

Q. How many of Murphy's men boarded with Wells between the 13th and the 19th of March.

A. That I do not know, I do not know how many boarded there, some boarded there, according to what I heard said.

Q. You do not know how many?

A. No, sir, I was not down there at all.

Q. When was the first time that you saw Newman?

A. I think between the 13th and the 20th of April.

Q. Where did you see him?

A. On the county road, the West Seattle, county road.

Q. What was he doing there?

A. Well, he was leaning up against the railing there, he had a stick and was standing there talking.

Q. How long was he there, do you know?

A. Oh, he was there, I guess, for a half an hour, or so, I did not pay much attention, I was working or building the road and I did not pay much attention.

Q. Were you introduced to him then as Newman?

A. Yes sir.

Q. Can you name the men that you had working on Murphy's grade during the time between the 13th and the 19th of March?

A. No, I could not do it. I did not commence until the 15th.

Q. You do not know who worked for him on the 12th, 13th, and 14th? A. No, sir.

Q. Can you name the men who were working for him on the 15th, 16th, 17th, 18th, and 19th?

A. I think some old hands quit and they put on a couple of new ones; but I do not remember the names.

I have got the names of seven or eight that worked there the first days.

Q. I understand you only kept the time the first day?

A. That is all.

Q. And that you paid no attention to the time?

A. No, sir, I did not. Mr. Murphy kept the time himself, I did not bother.

Q. You simply looked after the actual grading?

A. Yes, sir.

Q. Now, can you name the men who worked between the 15th and the 19th?

A. The 15th and 19th?

Q. Yes. A. No, sir, I cannot.

Q. They were constantly changing men from old to new men, were they not?

A. I think while I was on the job we had three or four new men and there were some of the old hands quitting.

Q. Did you pay particular attention to who was working for him, or how long they worked?

A. How long they worked?

Q. Or did you simply look after the actual grading?

A. When they were quitting they went to Murphy and got their money.

Q. You had nothing to do with that?

A. No, sir.

Q. You looked after the actual grading?

A. Yes, sir. That is, the grading and clearing.

Q. No concern of yours who he employed or how long they worked, or when they quit?

A. No, sir, it did not make any difference.

Q. You paid very little attention to them?

A. No, I did not pay much attention to them particularly. When they got tired they quit and went and got their money. They would send up some other men and put on the work, and we would start them to work whenever they were sent up.

Q. Can you recollect the changes or description of the men who worked there between the 15th and the 19th of March?

A. I could if I saw them.

Q. You could if you saw them?

A. I believe so.

Q. It is pretty hard to remember them?

A. I know it is, but if I could see their faces once I would know them again.

Q. Mr. Cox, did you not go up to Mr. Newman's house at the instance of Mr. Gardner to see if you knew the man?

A. Yes, sir.

Q. Did not you tell Gardner you had never seen the man before?

A. No, sir, I did not.

Q. What did you tell him?

A. I told him I had seen Newman before, and that that man never worked on that work while I was on there.

Q. You are sure that you did not tell him that you had never seen him before?

A. I am sure that I told him that I had seen Newman before.

Q. That is, the time that you saw him on the road that you refer to?

A. Yes, sir. That was in April.

Q. Why did you go to the house if you already knew that Newman had not worked there?

A. Well, the reason was that Murphy claimed he had a man by that name on the job at the time that I was working on it, and I says, "I do not know, I have heard the name, the name is familiar, but whether he was on that job or not I do not know for sure." And I says, "in this case I am going up to see if the man ever worked there or not while I was on it."

Q. But you say you already knew him at that time?

A. I knew the man by sight.

Q. You knew him by sight? A. Yes, sir.

Q. And still went up to the house at Gardner's request to see if you knew him or not?

A. Well, Murphy claimed he worked on the work, and I wanted to see for sure if he did or not.

Q. Notwithstanding you had seen him before and knew him? A. Yes, sir.

Q. When did you quit working for Murphy?

A. Somewheres around the 20th of March. I did not work for him afterwards.

Q. You quit bossing for him?

A. Yes, sir. I done a little work after that, I think in April some time. I fitted a saw for him and put in a couple of ax handles; the bill came to a dollar.

Q. There was a little misunderstanding between you and Murphy, was there not?

A. No, sir, there was no misunderstanding whatever.

Q. Why did you quit?

A. Because he told me he had another job over in town when he hired me; and he said he wanted a man

to look after that work. He said he and his partner had another job over in town and he was looking after some work in Seattle, and he had to look after the sewer, and he wanted a man to look after his other business.

Q. Did he give you that job after you got through at West Seattle? A. What job?

Q. The one at Seattle.

A. I was not to work in Seattle at all.

Q. You say when you quit working for Murphy at West Seattle that he had a job over here?

A. No; the reason that I quit working for him in West Seattle—he said that he had a job over here, looking after the sewer, he said he and his partner had a job over here, and his partner was sick and he wanted to be over here looking after the sewer, and that was the reason that he hired me to look after this job over there.

Q. When you quit him over there, he did not tell you that he had another job for you? A. No, sir.

Q. When did you quit working for him?

A. I quit working for him—that is, quit working for him by the day. Of course I fitted a saw and I put in a few axe handles for him.

Q. He put in another foreman.

A. I do not know whether he did or not.

Q. Did Murphy discharge you? A. Yes.

Redirect Examination.

Q. (Mr. MARTIN.) Murphy and this detective Gardner went over there and tried to get you to testify that this man Newman that was injured on the “Blakeley” worked on the grade, did he not?